

**1999 DRAFTING REQUEST**

**Bill**

Received: **12/8/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 7-9546**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - public health**

Extra Copies: **TAY**

**Topic:**

DOA:.....Jablonsky - Radioactive material regulation

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 12/23/98	wjackson 01/11/99	hhagen 01/12/99	_____	lrb_docadmin 01/12/99		S&L
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FE Sent For:

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STATE OF



WISCONSIN

Department of Administration  
Division of State Executive Budget and Planning  
101 S. Webster - 7th Floor  
Telephone: 266-

Date: 12/7/98

To: Steve Miller

From: Sue Jablonsky 7-9546

This is the language needed to become an "agreement state" for purposes of taking over responsibility for regulation of radioactive materials from the federal government.

Radioactive Material  
Regulation

SURCHAPTER III

RADIATION PROTECTION

254.31 *Definitions.* In this subchapter:

~~254.31(3)~~ (1) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities to prepare the site for postoperational care.

(3) "Department" means the Department of Health and Family Services, hereinafter referred to as the department.

(4) "Forfeiture" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

(5) "General License" means a license effective under rules and regulations adopted by the department without the filing of an application with the department or the issuance of licensing documents to a facility or persons to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing radioactive material.

~~(3g)~~ (6) "Ionizing radiation" as used in this chapter refers to electromagnetic radiations such as X-rays and gamma rays, or particulate radiations such as electrons or beta particles, protons, neutrons, alpha particles, usually of high energy, but in any case it includes all radiations capable of producing ions directly or indirectly in their passage through matter. means all radiations capable of producing ions directly or indirectly in their passage through matter, and includes electromagnetic radiations such as x-rays and gamma rays, or particulate radiations such as electrons or beta particles, protons, neutrons, alpha particles or other nuclear particles.

~~(3p)~~ (7) "Nonionizing radiation" means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

~~(4)~~ (8) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.



(9) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency of this state other than the (?), political subdivision of the state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but not including federal government agencies.

~~(4)~~ (10) "Radiation" means both ionizing and nonionizing radiation.

~~(6)~~ (11) "Radiation machine" is any device that produces radiation when in use. "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation except those which emit radiation only from radioactive material. This does not include devices which emit non-ionizing radiation.

~~(7)~~ (12) "Radiation installation" is any location or facility where radiation machines radiation generating equipment are is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

~~(8)~~ (13) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously. This includes accelerator-produced, byproduct, naturally occurring, source and special nuclear material.

~~(9)~~ (14) "Radiation source" means a radiation machine-generating equipment or radioactive material as defined herein.

(15) "Registration" means registration with the department in accordance with rules and regulations adopted pursuant to this section.

~~(10)~~ (16) "Source material" means any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof.

~~(11)~~ (17) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

(18) "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated under this section, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing radioactive material.

(19) "Transuranic" means any radioactive material having an atomic number greater than 92.

~~(12)~~ (20) "X-ray tube" means any electron tube which is specifically designed for the conversion of electrical energy into X-ray energy.

254.31 - ANNOT.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491.

**254.332 Public policy.** Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy to advise, consult and cooperate with ~~and~~ other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, receive, acquire, own or possess any source of radiation unless licensed by or registered with the department.

254.332 - ANNOT.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5).

**254.33 Federal-state agreements**

(1) AGREEMENTS. The governor, on behalf of the state, may enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain of the Commission's licensing and related regulatory authority with respect to byproduct, source and special nuclear materials and the assumption of regulatory authority by the state.

(2) TRANSITION. Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the U.S. Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be deemed to possess a like license issued under this subchapter, which shall expire either 90 days after the receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

**254.34 Powers and duties.** (1) The department and ~~the department of commerce~~ is designated as the state radiation control agency and shall:

(a) Formulate, adopt and enforce, amend and repeal rules, including registration or licensing of sources of ionizing radiation, as may be

necessary to prohibit and prevent unnecessary radiation exposure. Such rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21(2).

Rules and regulations shall be no less stringent than the regulations adopted by the United States Nuclear Regulatory Commission specifically for the regulation of byproduct, source and special nuclear material. Rules and regulations for naturally occurring and accelerator produced radioactive materials and x-ray devices may be no less stringent than the most current standards and guidelines developed by national and international organizations such as the Conference of Radiation Control Program Directors, the American College of Radiology and the National Council on Radiation Protection and Measurements. Other departments and agencies of state government and local governmental units may adopt the identical rules but no other rule, code or ordinance relating to this subject may be promulgated or enacted except as provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

(b) Administer this subchapter and the rules promulgated under this subchapter.

(c) Develop comprehensive policies and programs for the evaluation, ~~and determination and reduction of hazards associated with the use of radiation, and for their amelioration.~~ Department programs developed to comply with this section shall be compatible with federal programs for the regulation of byproduct, source and special nuclear materials. The department shall maintain records including:

1. files of all license applications, issuance, denials, transfers, amendments, renewals, modifications, suspensions and revocations.
2. files of registrants possessing sources of radiation requiring registration under the provisions of this section and any related administrative or judicial action.

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

(5) Develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), the department shall allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

254.34 - ANNOT.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27.

254.34(2) The department may:

~~(2) The department, serving as the lead agency, and the department of commerce may~~

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

254.34(4) (moved)

~~(4) The department shall develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), the department shall allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.~~

254.34 — ANNOT.

~~History: 1985 a. 29; 1985 a. 192 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27.~~

**254.35 Registration of ionizing radiation installations. (1) APPLICATION.** Every site in this state having an ionizing radiation installation, including generally licensed devices, not exempted by this section or the rules of the department shall be registered by the department by January 1, 1964, (?) by the person in control of an installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency. ~~and No~~ such ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. Every site having an ionizing radiation installation established in this state after July 20, 1985, (?) shall be registered prior to its operation. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone shall not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but shall serve merely to inform the department of the location and character of radiation sources. ~~The department shall furnish the department of commerce with a copy of each amended and new registration. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources shall not be required to list such sources on the registration form.~~

**(2) AMENDED REGISTRATION.** If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis. The department shall record the change in the registration. If the person in control transfers ownership control of the radiation installation to another person the registrant must notify the department of the transfer within 15 days. The registration does not transfer to the new person in control. A new registration is required. ~~the registration also transfers to the other person, who shall notify the department of the transfer within 15 days. The department shall record the change in the registration.~~ If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

(3) REGISTRATION FEES (a) An annual registration fee under pars. (b) to (f) shall be levied for each site registration under this section. An additional penalty fee of ~~\$10~~, \$25 regardless of the number of X-ray tubes, ~~or regulated generally licensed devices~~ shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

(b) For a ~~medical~~ site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, and hospitals ~~that possesses radioactive materials in any quantity, and chiropractors,~~ the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

(c) For a ~~chiropractic, podiatric or veterinary~~ site having an ionizing radiation installation, the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

(d) For a dental site having an ionizing radiation installation, the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$20~~ \$30 for each X-ray tube.

(~~f~~) (e) For an industrial, school, research project or other site having an ionizing radiation installation ~~and radioactive materials in any quantity,~~ the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

(f) For any site having generally licensed devices not exempted by the department, the fee shall be at least ~~\$200 for each site regardless of the number of devices.~~ \$100 for each site, and at least \$50 for each device containing at least 370 MBq (10 mCi) of cesium-137, 37MBq (1 mCi) of cobalt-60, 3.7 MBq of (0.1 mCi) of strontium-90, or 37 MBq (1 mCi) of any transuranic.

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee after January 1, 1986, (?) for a site having an ionizing radiation installation or for an X-ray tube., or generally licensed devices not exempted by the department.

(4) EXEMPTIONS. ~~After the initial registration~~ The department shall may exempt from annual registration any source licensed by the nuclear regulatory commission and may exempt from registration any source of radiation installation which the department finds to be without undue radiation hazard as determined by standards established by the national council on radiation protection and measurements or any comparable nationally recognized agency established for the purpose of recommending standards for radiation protection., and after the initial registration may exempt from subsequent annual radiation requirements any source of radiation devoted primarily to industrial purposes.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

254.36

~~254.36 Radiation protection. The department shall promulgate a radiation protection code. Other departments and agencies of state government and local governmental units may adopt the identical code, but no other rule, code or ordinance relating to this subject may be promulgated or enacted except as provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.~~

~~254.36 — ANNOT.~~

~~History: 1979 c. 320; 1981 c. 86; 1983 a. 27 s. 2202 (38); 1985 a. 29 s. 3202 (1); 1987 a. 399; 1993 a. 27 s. 230; Stats. 1993 s. 254.36; 1995 a. 227, 378; 1997 a. 27.~~

254.36 Licensing of radioactive materials. (1) The department shall develop rules and regulations for the issuance, amendment, suspension and revocation of specific and general licenses for the possession, manufacture, use, transportation, storage, packaging, sale, distribution, production and disposal of radioactive material, or devices or equipment utilizing such material, not under the authority of the United States Nuclear Regulatory Commission. Department licensing program shall be compatible with federal programs for the regulation of byproduct, source and special nuclear material.

(2) APPLICATION. Each site utilizing radioactive materials in any capacity listed in sub.(1) of this section that is not exempted by this section or the rules of the department shall be licensed by the department prior to operation. A radioactive materials site may not operate thereafter unless the site has had its license renewed annually and the person in control possesses a copy of the approved license. The application for license shall be made on forms supplied by the department that shall be devised to obtain any information necessary. The department shall levy license fees in accordance with sub. (4). The department may recognize other state or federal licenses for materials upon receipt of application for reciprocal recognition from the licensee.

(3) AMENDMENT The person in control must notify the department within 30 days of any change to the information on a radioactive materials license. The department shall record the change in the license. If a licensed activity is terminated, the person in control must notify the department within 30 days of the termination. The department may require a decommissioning plan be submitted and approved.

(4) FEES. (a) The department may assess a fee to existing and future United States Nuclear Regulatory Commission licenses to fund development of a state radioactive materials licensing and regulatory program. This fee shall terminate upon transfer of regulatory authority over byproduct, source and special nuclear materials to the state.

(b). The department shall levy a fee for each initial license application. The department shall levy a subsequent annual license renewal fee for each existing

license. An additional penalty of twenty five percent (25%) of the license renewal fee shall be required for each license whenever the annual fee for renewal is not paid within 30 days of the due date. The department may charge a fee for each license amendment, application for reciprocal recognition or termination request.

(c). The department shall establish a schedule of all license application, renewal, amendment and termination fees. The fees may be changed by rule.

(5) EXEMPTIONS. The department may exempt from licensing any radioactive material which the department finds to be without undue radiation hazard as determined by standards established by the national council on radiation protection and measurements or any nationally accepted standards.

**254.37 Enforcement. (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT.**

Whenever the department ~~or the department of commerce~~ finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, it shall notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation and order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

**(2) ORDERS.** The department ~~or the department of commerce~~ shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department ~~or the department of commerce~~ finds that a condition exists which constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department ~~or the department of commerce~~ may summarily cause the abatement of the violation.

**(3) RULES.** The department shall enforce the rules pertaining to ionizing radiation. ~~in establishments principally engaged in furnishing medical, surgical, chiropractic and other health services to persons and animals. The department of commerce shall enforce the rules pertaining to ionizing radiation in industrial establishments. The department shall notify the department of commerce and deliver to it a copy of each new registration and at such time a decision shall be made as to which state agency shall enforce the rules pertaining to ionizing radiation.~~

**(4) JURISDICTION.** All orders issued under this subchapter shall be enforced by the attorney general. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctive and other appropriate relief.



History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27.

**254.38 Denial, suspension or revocation of license or registration.** The department may, after a hearing under ch. 227, deny issuance of a license or registration to an applicant or suspend or revoke any license or registration issued under this section if the applicant, license holder or registrant or their employe violates this section, any rules developed by the department under this section or any condition of their license.

~~254.38-39 Impounding materials Emergency authority.~~ (1) **IMPOUNDING MATERIALS.** The department ~~or department of commerce~~ may impound or order the sequestration of sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department. ~~or the department of commerce.~~

~~254.38-39~~ ANNOT.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5).

(2) **EMERGENCY ORDERS.** If the department finds that an emergency exists requiring immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing reciting the existence of the emergency and requiring such action as necessary to mitigate the emergency. The order shall be effective immediately. Any person to whom the order is issued shall comply immediately. A person to whom an emergency order is issued shall be afforded a hearing within 30 days of requesting the hearing in writing. The emergency order may be continued, revoked or modified based on the results of the hearing. The emergency order shall remain in effect for a maximum of 90 days after the order has been issued.

~~254.3940~~ **Exceptions.** (1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) This subchapter does not apply to on-site activities of any nuclear reactor plant licensed by the nuclear regulatory commission.

~~254.39-40~~ - ANNOT.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39.

**254.41 Radiation monitoring of nuclear power plants.** The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of \$30,000 per plant, commencing in fiscal year 1983-84, to finance radiation monitoring under this section. The

department may change this annual fee by rule.

254.41 - ANNOT.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.

~~254.45 Penalties. Any person who violates any provision of this subchapter or any rule or order of the department, or of the department of commerce, issued under this subchapter shall forfeit not less than \$10 nor more than \$500. Each day of continued violation after notice of the fact that a violation is being committed shall be considered a separate offense. If the injury or death of an employe is caused by a failure of an employer to observe or enforce any rule issued under this subchapter, compensation and death benefits shall be increased by 15% as provided in s. 102.57.~~

254.45 Penalties. (1) GENERAL. Any person who violates any licensing or registration provision of this subchapter or any rule, regulation or order issued by the department under this subchapter or any term, limitation or condition of any license or registration issued by the department under this subchapter or commits any violation for which a license or registration may be revoked under rules, regulations or orders issued by the department under this subchapter may be subject to a forfeiture imposed by the department. The department may, by rule, set daily forfeiture amounts for each specific violation. Each day shall constitute a separate violation for the purpose of computing the amount of forfeiture. The department shall have the authority to waive, reduce or increase the forfeiture based on the severity, impact on public health or the environment and willfulness of the violation.

(2) NOTIFICATION. Notification of violation and penalty shall be in writing, setting forth the date, facts, and nature of each act or omission with which the person is charged and specifically identifying the particular provision or provisions of the subchapter, rule, regulation, order, license or registration involved in the violation and advising of each penalty which the department intends to impose and its forfeiture amount. If the injury or death of an employe is caused by a failure of an employer to observe or enforce any rule or order issued by the department under this subchapter, compensation and death benefits shall be increased by 15% as provided in s. 102.57.

(3) AMOUNT OF PENALTY. The daily forfeiture shall be not less than one hundred dollars (\$100) but not to exceed one hundred thousand dollars (\$100,000) for each violation. The amount of the forfeiture shall be determined by considering the willfulness of the violation, past history of the person in violation of this subchapter, the potential danger or injury to the public health or environment, the potential or actual costs of such damage or injury, the actual cost to the department of enforcing the provisions of this subchapter or rules developed under this subchapter and the cost of any mitigation to property or the environment caused by the violation.

(a) The department may directly assess a forfeiture imposed under this subsection by specifying the amount of that forfeiture in the notice provided under sub. (2).

(b) A person against whom the department has assessed a forfeiture shall pay that forfeiture to the department within 10 days after receipt of notice of the assessment or, if that person contests the assessment under sub. (4), within 10 days after receipt of the final decision after exhaustion of administrative review or, if that person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review.

(4) APPEAL OF PENALTY. Any person upon whom a forfeiture is imposed may appeal such action by requesting in writing a hearing under ch. 227.44 within 10 days of receipt of the notification of the forfeiture. The department shall hold an administrative hearing under ch. 227.44 within 30 days after receipt of the request for the administrative hearing unless both parties consent to an extension of that time period.

(5) DISPOSITION OF FORFEITURES. All monies collected from forfeitures shall be paid to the state treasurer for deposit in the general fund. Monies collected from forfeitures shall not be used for normal operating expenses of the department except as appropriations are made from the general fund in the normal budgetary process.

(6) ENFORCEMENT. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section that has not been paid as provided in sub. (3) par. b. The only contestable issue in an action under this subsection is whether or not the forfeiture has been paid.

254.45 - ANNOT.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5).

## Regulation of Radioactive Material - Agreement State

### Current Language

WI Stats. 254.31 - .45 Radiation Protection authorizes the Department of Health and Family Services to establish registration programs to regulate sources of ionizing radiation, impound radioactive materials, monitor the environment for radiation emissions around nuclear power plants, and develop necessary rules. It also authorizes registration and environmental monitoring fees to support radiation control programs, and establishes penalties for non-compliance. The statutory authority to regulate radioactive materials currently applies only to materials not licensed by the Nuclear Regulatory Commission.

### Proposed Change

The proposed change to WI Stats. 254.31 - .45 establishes the statutory language needed to become an agreement state with the Nuclear Regulatory Commission (NRC). An agreement state is a state that enters into an agreement with the NRC to assume regulatory authority over specific radioactive materials currently under federal jurisdiction. The proposed statutory changes will allow the Department to develop the necessary regulatory program so the state can assume licensing and inspection authority from the NRC over approximately 300 licensed users of radioactive materials. Specific changes are as follows:

1. Add new and revise existing definitions consistent with NRC regulations.
2. Establish authority for Wisconsin to enter into an agreement with the NRC to assume regulatory authority over radioactive materials under federal jurisdiction.
3. Add transition language that details how the transfer of authority between the NRC and state will occur.
4. Remove all reference to the Department of Commerce, since it has no current role in radiation regulation.
5. Add NRC required language stating that radiation related rules and regulations shall be no less stringent than those of the NRC.
6. Add NRC required language that Department radiation regulatory programs shall be compatible with NRC programs for regulation of specific materials.
7. Establish authority to register devices containing radioactive material that are purchased under a NRC or other agreement state general license.
8. Establish authority to assess a general license device registration fee. Establish the fee amount.
9. Remove requirement to register radioactive materials. ?
10. Revise x-ray registration fees to reflect current fee structure.

11. Establish authority to license and inspect radioactive materials consistent with NRC regulatory structure, and assess license fees.
12. Establish authority for the Department to assess a fee to existing NRC licenses in Wisconsin to fund development of an agreement state program.
13. Establish authority to deny, suspend or revoke a license or registration after a hearing.
14. Establish authority for DHFS to issue emergency orders to protect the public from radiation exposure.
15. Increase DHFS authority to levy penalties for violating DHFS radiation statutes and rules, orders, or conditions of a license or registration; increase amount of penalties consistent with NRC requirements; add mechanism to appeal penalties; specify disposition of forfeitures and enforcement.

### **Effect of the Change**

The proposed statutory changes will do the following:

1. Authorize Wisconsin to become an agreement state with the Nuclear Regulatory Commission.
2. Appropriately remove all reference to the Department of Commerce in the radiation statutes, since it has no role in radiation regulation.
3. Authorize DHFS to develop an agreement state radioactive material licensing, general license device registration and materials inspection program consistent with NRC adequacy and compatibility requirements.
4. Authorize DHFS to assess license and other fees to support a radioactive material licensing, general license device registration and materials inspection program.
5. Authorize DHFS to assess a temporary fee to NRC licensees in Wisconsin to fund development of a state radioactive material licensing, general license device registration and materials inspection program.

### **Background**

In a letter dated September 25, 1998, Governor Thompson requested the assistance of the Nuclear Regulatory Commission in pursuing an agreement to transfer regulatory authority over radioactive materials currently under federal jurisdiction from the NRC to the State of Wisconsin. This letter directs the Department to develop an agreement state radioactive material regulatory program. This program must be evaluated by the NRC and found to be adequate to protect public health and compatible with the NRC's existing regulatory programs before an agreement transferring regulatory authority to the state can be signed.

Federal law originally authorized the agreement state program of the NRC in 1959. There are currently 30 agreement states, including Illinois and Iowa. Many of the remaining non-agreement states, including Minnesota, have already initiated the multi-year process of becoming an agreement state. An agreement state licenses and inspects radioactive material users instead of the NRC, and sets its own fees to support the state regulatory program. The NRC periodically evaluates the state regulatory program, rather than individual licensees, to ensure continued program adequacy and compatibility with federal radioactive materials regulations.

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The Nuclear Regulatory Commission requires that a state develop its own licensing and inspection program, including all necessary statutes, rules, staff, procedures and forms, before any transfer of regulatory authority. The process of becoming an agreement state is as follows:

1. The state must first request the assistance of the Nuclear Regulatory Commission in pursuing agreement state status.
2. NRC assigns a project officer to provide assistance with meeting NRC requirements.
3. The state must develop its own radioactive material licensing and inspection program, including statutes, rules, procedures, and trained staff.
4. NRC evaluates the state program to determine if it is adequate to protect public health and compatible with the NRC's existing regulatory program. A finding of adequacy and compatibility is required before an agreement can be signed.
5. The state and the NRC sign an agreement that makes the state an agreement state.
6. The state assumes regulatory authority over specific NRC materials and licenses.
7. NRC periodically evaluates the state program to ensure continued adequacy and compatibility.

The existing users of radioactive materials in Wisconsin strongly support becoming an agreement state with the NRC due to the improved efficiency and simplified regulatory structure that will result. Agreement state status will:

1. Reduce licensing fees for radioactive material users.
2. Replace an inefficient system of radioactive material regulation split between the federal and state government with more efficient, uniform state regulation of the large variety and quantity of radioactive materials used in medicine, industry, research and education in Wisconsin.
3. Bring the regulator closer to customers.
4. Minimize future fee increases.



SOON - in edit 12/23  
State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1164/1

DAK.../.....

Wlj

+  
jlg

D-NOTE

DOA:.....Jablonsky - Radioactive material regulation

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Do Not  
Gen Cert

1 AN ACT *f.;* relating to: the budget.

*Analysis by the Legislative Reference Bureau*

✓HEALTH AND HUMAN SERVICES ✓

✓OTHER HEALTH AND HUMAN SERVICES ✓

Under current law, the department of health and family services (DHFS) and the department of commerce are together authorized to perform various actions, including impounding materials, to regulate sources of ionizing and ✓nonionizing ✓radiation. DHFS annually registers sites of ionizing radiation installations, such as medical sites, and imposes annual fees for each site and each X-ray tube at the site. Violation of the regulatory statutes or rules subjects the violator to a forfeiture.

This bill eliminates authority of the department of commerce to regulate sources of ionizing and nonionizing radiation. The bill authorizes the governor to enter into agreements with the U.S. Nuclear Regulatory Commission to discontinue certain federal governmental licensing and related regulatory authority with respect to by-product, source and special nuclear radioactive material and to assume state regulatory authority. Under the bill, if the agreements are made, persons possessing licenses issued by the U.S. Nuclear Regulatory Commission are considered to be licensed by the state; the licenses expire 90 days after notice of expiration by DHFS or on the expiration date of the former federal licenses, whichever is earlier. Rules promulgated by DHFS to register or license sources of ionizing radiation may not be less stringent than federal statutory standards and rules for naturally occurring and accelerator-produced radioactive materials and rules for X-rays may not be less

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authorizes DHFS to issue emergency orders to protect the public from radiation exposure;

stringent than the most recent standards and guidelines specified by certain national organizations.

The bill establishes authority for DHFS to license annually, either specifically or generally, the possession, use, manufacture, transportation, storage, transfer and disposition of devices or items that use radioactive material and to operate a site that uses radioactive material. DHFS may assess annual fees for the licenses and must promulgate rules for issuance, modification, suspension, termination and revocation of the licenses. DHFS also is authorized to issue reciprocal recognition of a license for radioactive materials of another state or the U.S. Nuclear Regulatory Commission.

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The bill eliminates court-imposed forfeitures for violations of the radiation regulatory statutes and rules of DHFS and instead establishes administrative forfeitures that DHFS may directly assess and procedures for notice, a hearing for contested cases, forfeiture payment and disposition and enforcement.

Lastly, the bill increases the annual fee amounts for registration of ionizing radiation installation sites and for X-ray tubes at those sites and changes current law to prohibit, rather than allow, transfer of registration of ionizing radiation installations if ownership transfers.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

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1 SECTION 1. 20.435 (5) (ed) of the statutes is amended to read:

2 20.435 (5) (ed) *Radon aids*. The amounts in the schedule for the provision of

3 state aid for local radon services under s. 254.34 (4) (1) (h) 5.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.

4 SECTION 2. 166.15 (1) (f) of the statutes is amended to read:

5 166.15 (1) (f) "Nuclear incident" means any sudden or nonsudden release of

6 ionizing radiation, as defined under s. 254.31 (3g), from radioactive waste being

7 stored or disposed of in a waste repository or transported. "Nuclear incident" does



1 not include any release of radiation from radioactive waste being transported under  
2 routine operations.

3 History: 1985 a. 29; 1989 a. 31; 1989 a. 56 s. 259; 1993 a. 27; 1995 a. 227, 247.

3 **SECTION 3.** 254.31 (3)<sup>✓</sup> of the statutes is renumbered 254.31 (1).<sup>✓</sup>

4 **SECTION 4.** 254.31 (2)<sup>✓</sup> of the statutes is created to read:

5 254.31 (2) "Decommissioning"<sup>✓</sup> means conducting final operational activities at  
6 a nuclear facility to dismantle site structures, to decontaminate site surfaces and  
7 remaining structures, to stabilize and contain residual radioactive material and to  
8 carry out any other activities necessary to prepare the site for postoperational care.


9 **SECTION 5.** 254.31 (2m)<sup>✓</sup> of the statutes is created to read:

10 254.31 (2m)<sup>✓</sup> "Generally licensed devices" means devices that meet the general  
11 license requirements under s. 254.365 (1) (b).<sup>✓</sup>

12 **SECTION 6.** 254.31 (3g)<sup>✓</sup> of the statutes is repealed and recreated to read:

13 254.31 (3g) "Ionizing radiation" means all radiations capable of producing ions  
14 directly or indirectly in their passage through matter, including all of the following:

15 (a) Electromagnetic radiations, including X<sup>✓</sup>-rays and gamma rays.

16 (b)  Particulate radiations, including electrons, beta particles, protons,  
17 neutrons, alpha particles and other nuclear particles.

18 **SECTION 7.** 254.31 (5)<sup>✓</sup> of the statutes is created to read:

19 254.31 (5)<sup>✓</sup> "Radiation generating equipment" means a system, manufactured  
20 product or device or component part of such a product or device that, during operation  
21 is capable of generating or emitting radiation from material other than radioactive  
22 material. "Radiation generating equipment" does not include a device that emits  
23 nonionizing radiation.

24 **SECTION 8.** 254.31 (6)<sup>✓</sup> of the statutes is amended to read:

1           254.31 (6) "Radiation installation" is any location or facility where radiation  
2     ~~machines are~~ <sup>✓</sup>generating equipment is used or where radioactive material is  
3     produced, transported, stored, disposed of or used for any purpose.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491.

4           **SECTION 9.** 254.31 (7) <sup>✓</sup>of the statutes is repealed.

5           **SECTION 10.** 254.31 (8) <sup>✓</sup>of the statutes is renumbered 254.31 (9m) <sup>✓</sup>and amended  
6     to read:

7           254.31 (9m) <sup>✓</sup>"Radioactive material" includes any solid, liquid or gaseous  
8     substance which emits ionizing radiation spontaneously, including  
9     ~~accelerator-produced byproduct, naturally occurring source material and special~~  
10    nuclear material.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491.

11          **SECTION 11.** 254.31 (9) <sup>✓</sup>of the statutes is amended to read:

12          254.31 (9) "Radiation source" means a radiation ~~machine~~ generating  
13     ~~equipment~~ <sup>✓</sup>or radioactive material as defined herein.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491.

14          **SECTION 12.** 254.31 (11m) <sup>✓</sup>of the statutes is created to read:

15          254.31 (11m) "Transuranic" means a radioactive material having an atomic  
16     number that is greater than 92.

17          **SECTION 13.** 254.31 (12) <sup>✓</sup>of the statutes is amended to read:

18          254.31 (12) "X-ray tube" <sup>✓</sup>means any electron tube which is specifically  
19     designed for the conversion of electrical energy into X-ray energy.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491.

20          **SECTION 14.** 254.33 <sup>✓</sup>of the statutes is amended to read:

21          **254.33 Public policy.** Since radiations and their sources can be instrumental  
22     in the improvement of the health and welfare of the public if properly utilized, and  
23     may be destructive or detrimental to life or health if carelessly or excessively

1 employed or may detrimentally affect the environment of the state if improperly  
 2 utilized, it is hereby declared to be the public policy of this state to encourage the  
 3 constructive uses of radiation and to prohibit and prevent exposure to radiation in  
 4 amounts which are or may be detrimental to health. It is further the policy for the  
 5 department to advise, consult and cooperate with ~~the department of commerce and~~  
 6 other agencies of the state, the federal government, other states and interstate  
 7 agencies and with affected groups, political subdivisions and industries; and, in  
 8 general, to conform as nearly as possible to nationally accepted standards in the  
 9 promulgation and enforcement of rules.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5).

SECTION 15. 254.335 of the statutes is created to read:

11 **254.335 Agreements with the U.S. Nuclear Regulatory Commission.**

12 The governor may, on behalf of the state, enter into agreements with the U.S.  
 13 Nuclear Regulatory Commission, as provided in 42 U.S.C. 2021 (b), to discontinue  
 14 certain federal licensing and related regulatory authority with respect to by-product  
 15 material, source material and special nuclear material and to assume state  
 16 regulatory authority.

SECTION 16. 254.34 (1) (intro.) of the statutes is amended to read:

18 254.34 (1) (intro.) The department and the department of commerce is the state  
 19 radiation control agency and shall do all of the following:

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27.

SECTION 17. 254.34 (1) (a) of the statutes is amended to read:

21 254.34 (1) (a) ~~Formulate, adopt and enforce, amend and repeal~~ Promulgate and  
 22 enforce rules, including registration and licensing of sources of ionizing radiation, as  
 23 may be necessary to prohibit and prevent unnecessary radiation exposure. ~~Such~~ The  
 24 rules may incorporate by reference the recommended standards of nationally

1 recognized bodies in the field of radiation protection and other fields of atomic energy,  
 2 under the procedure established by s. 227.21 (2). The rules may be no less stringent  
 3 than the requirements under 42 U.S.C. 2071 to 2114 and regulations adopted under  
 4 42 U.S.C. 2071 to 2114. Rules for naturally occurring and accelerator-produced  
 5 radioactive materials and for X-rays may be no less stringent than the most recent  
 6 standards and guidelines specified by the Conference of Radiation Control Program  
 7 Directors, the American College of Radiology and the National Council on Radiation  
 8 Protection and Measurements.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27.  
 9 SECTION 18. 254.34 (1) (c) of the statutes is renumbered 254.34 (1) (c) (intro.)

10 and amended to read:

11 254.34 (1) (c) (intro.) Develop comprehensive policies and programs for the  
 12 evaluation and, determination and reduction of hazards associated with the use of  
 13 radiation, and for their amelioration that are compatible with requirements of the  
 14 U.S. Nuclear Regulatory Commission for the regulation of byproduct material,  
 15 source material and special nuclear material. The department shall maintain all of  
 16 the following records:

17 SECTION 19. 254.34 (1) of the statutes is created to read:  
 18 254.34 (1) (1) Files of all license applications, issuances, denials, transfers,  
 19 renewals, modifications, suspensions and revocations under s. 254.365.

20 SECTION 20. 254.34 (1) of the statutes is created to read:  
 21 254.34 (1) (2) Files of all registrants under s. 254.35 and any related  
 22 administrative or judicial action.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27.  
 23 SECTION 21. 254.34 (2) (intro.) of the statutes is amended to read:

1           254.34 (2) (intro.)<sup>√</sup> The department, ~~-serving as the lead agency, and the~~  
2    ~~department of commerce~~ may:

3    History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27. <sup>√ e</sup>  
3    **SECTION 22.** 254.34 (4)<sup>√</sup> of the statutes is renumbered 254.34 (1) (h) 5.

4           **SECTION 23.** 254.35 (1)<sup>√</sup> of the statutes is amended to read:

5           254.35 (1) APPLICATION. ~~Every~~ For every site in this state having that has an  
6    ionizing radiation installation, that is not exempted by this section or the rules of the  
7    department ~~shall be registered by the department by January 1, 1964, by,~~ the person  
8    in control of ~~an~~ the installation, including installations in sites that are administered  
9    by a state agency or in an institution under the jurisdiction of a state agency, ~~and no~~  
10   ~~such shall, prior to operation, register the ionizing radiation installation~~ with the  
11   department. No ionizing radiation installation may be operated thereafter unless  
12   the site has been duly registered by January 1 of each year and a notice of the  
13   registration is possessed by the person in control. ~~Every site having an ionizing~~  
14   ~~radiation installation established in this state after July 20, 1985, shall be registered~~  
15   ~~prior to its operation.~~ The application for registration shall be made on forms  
16   provided by the department which shall be devised to obtain any information that  
17   is considered necessary for evaluation of hazards. Multiple radiation sources at a  
18   single radiation installation and under the control of one person shall be listed on a  
19   single registration form. Registration fees shall be levied in accordance with sub. (3).  
20   Registration alone ~~shall~~ does not imply approval of manufacture, storage, use,  
21   handling, operation or disposal of the radiation installation or radioactive materials,  
22   but ~~shall serve~~ serves merely to inform the department of the location and character  
23   of radiation sources. ~~The department shall furnish the department of commerce with~~  
24   ~~a copy of each amended and new registration.~~ Persons engaged in manufacturing,

1 demonstration, sale, testing or repair of radiation sources ~~shall not be~~ are not  
2 required to list such sources on the registration form.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

3 **SECTION 24.** 254.35 (2) of the statutes is amended to read:

4 254.35 (2) AMENDED REGISTRATION. If the person in control increases the  
5 number of sources, source strength, rated output or energy of radiation produced in  
6 any installation, he or she shall notify the department of the increase prior to  
7 operation on the revised basis. The department shall record the change in the  
8 registration. No registration is transferable from one premises to another or from  
9 one person to another. If the person in control ~~transfers~~ intends to transfer control  
10 of ownership of the radiation installation to another person ~~the registration also~~  
11 ~~transfers to the other person, who~~ , at least 15 days before the final transfer the  
12 registrant shall notify the department of the transfer within 15 days and the  
13 intended transferee shall file under sub. (1) an application for ~~registration~~. The  
14 department shall record the change in the registration. If any installation is  
15 discontinued, the person in control shall notify the department within 30 days of the  
16 discontinuance.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

17 **SECTION 25.** 254.35 (3) (title) of the statutes is amended to read:

18 254.35 (3) (title) FEES REGISTRATION FEES.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

19 **SECTION 26.** 254.35 (3) (a) of the statutes is amended to read:

20 254.35 (3) (a) An annual registration fee under pars. (b) to (f) (fm) shall be  
21 levied for each site registration under this section. An additional penalty fee of \$10  
22 \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be  
23 required for each registration whenever the annual fee for renewal is not paid prior

1 to expiration of the registration. No additional fee may be required for recording  
2 changes in the registration information.

3 History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

3 SECTION 27. 254.35 (3) (b) of the statutes is amended to read:

4 254.35 (3) (b) For a medical site having an ionizing radiation installation  
5 serving physicians and clinics, osteopaths and clinics, chiropractors and hospitals  
6 that possesses radioactive materials in any quantity, the fee shall be at least ~~\$25~~ \$36  
7 for each site and at least ~~\$30~~ \$44 <sup>plain space</sup> for each X-ray tube.

8 History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

8 SECTION 28. 254.35 (3) (c) of the statutes is amended to read:

9 254.35 (3) (c) For a ~~chiropractic~~, podiatric or veterinary site having an ionizing  
10 radiation installation, the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~  
11 \$44 for each X-ray tube.

12 History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

12 SECTION 29. 254.35 (3) (d) of the statutes is amended to read:

13 254.35 (3) (d) For a dental site having an ionizing radiation installation, the  
14 fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$20~~ \$30 for each X-ray tube.

15 History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

15 SECTION 30. 254.35 (3) (f) of the statutes is amended to read:

16 254.35 (3) (f) For an industrial, school, research project or other site having an  
17 ionizing radiation installation ~~and radioactive materials in any quantity~~, the fee  
18 shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

19 History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

19 SECTION 31. 254.35 (3) (fm) of the statutes is created to read:

20 254.35 (3) (fm) For any site that has generally licensed devices that are not  
21 exempted by the department, the fee shall be at least ~~\$100~~ \$100 for each site and at least  
22 \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq

1 or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi  
2 of a transuranic.✓

3 SECTION 32. 254.35 (3) (g)✓ of the statutes is amended to read:

4 254.35 (3) (g) The fees under this subsection shall be as stated unless the  
5 department promulgates rules to increase the annual registration fee after January  
6 1, 1986, for a site having an ionizing radiation installation or , for an X-ray tube or  
7 for generally licensed devices that are not exempted by the department.✓

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

8 SECTION 33. 254.35 (4)✓ of the statutes is amended to read:

9 254.35 (4) EXEMPTIONS. ~~The department shall~~ After initial registration under  
10 sub. (1)✓, the department may exempt from annual registration any source licensed  
11 by the nuclear regulatory commission and may exempt from registration any source  
12 of radiation installation which of radiation that the department finds to be without  
13 undue radiation hazard as determined by standards established by the national stat.  
14 committee on radiation protection and measurements ~~National Committee on~~  
15 ~~Radiation Protection and Measurements~~ or any comparable nationally recognized  
16 agency established for the purpose of recommending standards for radiation  
17 protection, and after the initial registration may exempt from subsequent annual  
18 radiation requirements any source of radiation devoted primarily to industrial  
19 purposes.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5).

20 SECTION 34. 254.36✓ of the statutes is renumbered 254.34 (1) (am)✓ and amended  
21 to read:

22 254.34 (1) (am) ~~Radiation protection.~~ The department shall promulgate a  
23 radiation protection code. Other departments and agencies of state government and  
24 A rule identical to a rule specified under par. (a)✓ may be promulgated by a state



1 agency other than the department and an ordinance identical to a rule specified  
 2 under par. (a) may be enacted by a local governmental units may adopt the identical  
 3 code unit, but no other rule, code or ordinance relating to this subject may be  
 4 promulgated or enacted may be promulgated or ordinance may be enacted that  
 5 differs from a rule under par. (a) and relates to the same subject area except as  
 6 provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

History: 1979 c. 320; 1981 c. 86; 1983 a. 27 s. 2202 (38); 1985 a. 29 s. 3202 (1); 1987 a. 399; 1993 a. 27 s. 230; Stats. 1993 s. 254.36; 1995 a. 227, 378; 1997 a. 27.

7 **SECTION 35. 254.365** of the statutes is created to read:

8 **254.365** <sup>b</sup> **Licensing of radioactive material. (1)** LICENSE REQUIRED. No

9 person may possess, use, manufacture, transport, store, transfer or dispose of  
 10 radioactive material or a device or item of equipment that uses radioactive material  
 11 or may operate a site that uses radioactive material that is not under the authority  
 12 of the U.S. <sup>Delete space</sup> <sup>lc</sup> Nuclear <sup>lc</sup> Regulatory <sup>lc</sup> Commission unless one of the following applies:

13 (a) The person is specifically licensed by the department.

14 (b) The person meets the general license requirements prescribed by the  
 15 department by rule to transfer, acquire, possess or use radioactive material or a  
 16 device or item of equipment that uses radioactive material.

17 (c) The person possesses a license issued by another state or by the U.S. <sup>Delete space</sup>

18 <sup>lc</sup> Nuclear <sup>lc</sup> Regulatory <sup>lc</sup> Commission that is reciprocally recognized by the department.

19 (d) The person is exempted from licensure under sub. (7).

20 (2) APPLICATION. Application for a license under sub. (1) (a) or for reciprocal  
 21 recognition under sub. (1) (d) shall be made on forms provided by the department.

22 (3) MODIFICATION OR TERMINATION OF LICENSE. Within 30 days after any change  
 23 to the information on a license issued under this section, the licensee shall inform the  
 24 department of the change and the department shall record the changed information.

1 Within 30 days after termination of an activity licensed under this section, the person  
 2 in control of the activity shall notify the department. The department may require  
 3 that the person in control submit a plan for decommissioning the activity to the  
 4 department for approval.

5 (4) RULES. The department shall promulgate rules for the issuance,  
 6 modification, suspension, termination and revocation of licenses under sub. (1) (a)  
 7 under the standards specified in s. 254.34 (1) (a).

8 (5) FEES AND CHARGES. (a) The department may assess fees, the amounts of  
 9 which are prescribed by the department by rule, for any of the following:

- 10 1. Issuance of an initial or renewal specific license under sub. (1) (a).
- 11 2. Issuance of a license amendment.
- 12 3. Termination of a license prior to the renewal date.
- 13 4. Issuance of reciprocal recognition of a license for radioactive materials of  
 14 another state or the U.S. Nuclear Regulatory Commission.

15 (b) The department may assess a late payment charge of 25% of the specific  
 16 license renewal fee, in addition to the fee under par. (a) for renewal of a specific  
 17 license, if payment for renewal of a specific license is not made within 30 days after  
 18 the license expiration date.

19 (6) DENIAL, SUSPENSION OR REVOCATION OF LICENSURE. The department may, after  
 20 a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for  
 21 failure by the licensee to comply with this subchapter, rules promulgated by the  
 22 department under this subchapter or any condition of the license.

23 (7) EXEMPTION. The department may exempt from licensing requirements of  
 24 this section radioactive material that the department finds is without undue

stat

lc  
Committee

lc

1 radiation hazard, under standards prescribed by the National ~~Council~~ on Radiation  
2 Protection and Measurements.

renumbered 254.37(1)(intro.) and

Fix  
Component

3 SECTION 36. 254.37 (1) of the statutes is amended to read:

4 254.37 (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. Whenever the  
5 department ~~or the department of commerce~~ finds, upon inspection and examination,  
6 that a source of radiation as constructed, operated or maintained results in a  
7 violation of this subchapter or of any rules promulgated under this subchapter, ~~it the~~  
8 department shall notify do all of the following:

9 (a) Notify the person in control that is causing, allowing or permitting the  
10 violation as to the nature of the violation ~~and order~~.

Delete space

11 (b) Order that, prior to a specified time, the person in control shall cease and  
12 abate causing, allowing or permitting the violation and take such action as may be  
13 necessary to have the source of radiation constructed, operated, or maintained in  
14 compliance with this subchapter and rules promulgated under this subchapter.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27.

15 SECTION 37. 254.37 (2) of the statutes is amended to read:

16 254.37 (2) ORDERS. The department ~~or the department of commerce~~ shall issue  
17 and enforce such orders or modifications of previously issued orders as may be  
18 required in connection with proceedings under this subchapter. The orders shall be  
19 subject to review by the department upon petition of the persons affected. Whenever  
20 the department ~~or the department of commerce~~ finds that a condition exists ~~which~~  
21 that constitutes an immediate threat to health due to violation of this subchapter or  
22 any rule or order promulgated under this subchapter, it may issue an order reciting

1 the existence of the threat and the findings pertaining to the threat. The department  
2 ~~or the department of commerce~~ may summarily cause the abatement of the violation.

3 History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27.

3 SECTION 38. 254.37 (3) of the statutes is amended to read:

4 254.37 (3) RULES. The department shall promulgate and enforce the rules  
5 pertaining to ionizing radiation ~~in establishments principally engaged in furnishing~~  
6 ~~medical, surgical, chiropractic and other health services to persons and animals. The~~  
7 ~~department of commerce shall enforce the rules pertaining to ionizing radiation in~~  
8 ~~industrial establishments. The department shall notify the department of commerce~~  
9 ~~and deliver to it a copy of each new registration and at such time a decision shall be~~  
10 ~~made as to which state agency shall enforce the rules pertaining to ionizing~~  
11 ~~radiation.~~

12 History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27.

12 SECTION 39. 254.37 (4) (title) of the statutes is amended to read:

13 254.37 (4) (title) ~~ENFORCEMENT JURISDICTION.~~

14 History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27.

14 SECTION 40. 254.38 of the statutes is renumbered 254.38 (1) and amended to  
15 read:

16 254.38 ~~EMERGENCY AUTHORITY~~ (1) <sup>(CS)</sup> Impounding materials. The  
17 department ~~or department of commerce~~ may impound or order the sequestration of  
18 sources of radiation in the possession of any person who is not equipped to observe  
19 or who fails to observe safety standards to protect health that are established in rules  
20 promulgated by the department ~~or the department of commerce.~~

21 History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5).

21 SECTION 41. 254.38 (2) of the statutes is created to read:

22 254.38 (2) EMERGENCY ORDERS. If the department finds that an emergency  
23 exists concerning a matter subject to regulation under this subchapter that requires

SECTION CR; 254.38 (title)  
254.38 (title) Emergency authority

1 immediate action to protect the public health or safety, the department may issue an  
 2 emergency order without notice or hearing that recites the existence of the  
 3 emergency and requires such action as is necessary to mitigate the emergency. Any  
 4 person to whom the order is issued shall immediately comply with the order. A  
 5 person to whom an emergency order is issued shall be afforded a hearing within 30  
 6 days after receipt by the department of a written request for the hearing. An  
 7 emergency order is effective upon issuance and remains in effect for up to 90 days  
 8 after issuance, except that the order may be revoked or modified based on the results  
 9 of the hearing.

10 SECTION 42. 254.39 (2) of the statutes is amended to read:

11 254.39 (2) This subchapter does not apply to on-site activities of any nuclear  
 12 reactor plant licensed by the nuclear regulatory commission U.S. Nuclear  
 13 <sup>lc</sup> ~~Regulatory~~ <sup>lc</sup> ~~Commission~~.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39.

14 SECTION 43. 254.45 of the statutes is repealed and recreated to read:

15 254.45 Penalties. (1) GENERAL. (a) Any person who violates this subchapter  
 16 or a rule promulgated under this subchapter or a condition of a license or registration  
 17 issued by the department under this subchapter may be required to forfeit not less  
 18 than \$100 <sup>nor</sup> ~~or~~ more than \$100,000. Each day of continued violation constitutes a  
 19 separate offense.

20 (b) The amount of the forfeiture assessed under par. (a) shall be determined by  
 21 considering all of the following:

- 22 1. The ~~wilful~~ <sup>willful</sup>ness of the violation.

1

2. <sup>The person's</sup> Previous violations, if any, ~~by the person~~ <sup>stat.</sup> ~~of~~ <sup>the statute</sup> this subchapter, rules

2 promulgated under this subchapter or conditions of a license or registration issued  
3 by the department under this subchapter.

4 3. The potential danger or actual or potential injury to the environment or to  
5 public health caused by the violation.

6 4. The actual or potential costs of the damage or injury caused by the violation.

7 (2) ASSESSMENT OF FORFEITURES; NOTICE. ✓ The department may directly assess  
8 forfeitures provided for in sub. ✓(1)✓. If the department determines that a forfeiture  
9 should be assessed for a particular violation, the department shall send a notice of  
10 assessment to the person. The notice shall specify the amount of the forfeiture  
11 assessed and the violation and the statute or rule alleged to have been violated and  
12 shall inform the person of the right to hearing under sub. (3)✓.

13 (3) HEARING. ✓ A person upon whom a forfeiture is imposed may contest the  
14 action by sending, within 10 days after receipt of notice of a contested action, a  
15 written request for hearing under s. ✓227.44✓ to the division of hearings and appeals  
16 created under s. ✓15.103 (1)✓. The administrator of the division may designate a  
17 hearing examiner to preside over the case and recommend a decision to the  
18 administrator under s. ✓227.46✓. The decision of the administrator of the division shall  
19 be the final administrative decision. The division shall commence the hearing within  
20 30 days of receipt of the request for hearing and shall issue a final decision within  
21 15 days after the close of the hearing. Proceedings before the division are governed  
22 by ch. ✓227.✓

23 (4) FORFEITURE PAYMENT AND DISPOSITION. ✓ (a) A person against whom the  
24 department has assessed a forfeiture shall pay the forfeiture to the department  
25 within 10 days after receipt of the notice under sub. (2)✓ or, if the person contests the

1 assessment, within 10 days after receipt of the final decision after exhaustion of  
2 administrative review. If the person petitions for judicial review under ch. 227, the  
3 person shall pay the forfeiture within 10 days after receipt of the final judicial  
4 decision.

5 (b) The department shall remit all forfeitures paid to the state treasurer for  
6 deposit in the school fund.

7 (5) ENFORCEMENT. The attorney general may bring an action in the name of the  
8 state to collect any forfeiture imposed under this section if the forfeiture has not been  
9 paid as required under sub. (4). The only issue to be contested in an action under this  
10 subsection is whether the forfeiture has been paid.

11 SECTION 44. 281.01 (15) of the statutes is amended to read:

12 281.01 (15) "Solid waste" means any garbage, refuse, sludge from a waste  
13 treatment plant, water supply treatment plant or air pollution control facility and  
14 other discarded or salvageable materials, including solid, liquid, semisolid, or  
15 contained gaseous materials resulting from industrial, commercial, mining and  
16 agricultural operations, and from community activities, but does not include solids  
17 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
18 return flows or industrial discharges which are point sources subject to permits  
19 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
20 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
21 (3) (1).

22 History: 1995 a. 227.

SECTION 45. 285.01 (40) of the statutes is amended to read:

23 285.01 (40) "Solid waste" means any garbage, refuse, sludge from a waste  
24 treatment plant, water supply treatment plant or air pollution control facility and

1 other discarded or salvageable materials, including solid, liquid, semisolid, or  
2 contained gaseous materials resulting from industrial, commercial, mining and  
3 agricultural operations, and from community activities, but does not include solids  
4 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
5 return flows or industrial discharges which are point sources subject to permits  
6 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
7 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
8 ~~(3)~~ (1).

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302; 1995 a. 227 ss. 438 to 453, 989; Stats. 1995 s. 285.01; 1997 a.

35.  
9 **SECTION 46.** 289.01 (33) of the statutes is amended to read:

10 289.01 (33) "Solid waste" means any garbage, refuse, sludge from a waste  
11 treatment plant, water supply treatment plant or air pollution control facility and  
12 other discarded or salvageable materials, including solid, liquid, semisolid, or  
13 contained gaseous materials resulting from industrial, commercial, mining and  
14 agricultural operations, and from community activities, but does not include solids  
15 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
16 return flows or industrial discharges which are point sources subject to permits  
17 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
18 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
19 ~~(3)~~ (1).

History: 1979 c. 34 ss. 978k, 984rd; 1981 c. 374 ss. 20 to 27, 148; 1983 a. 425, 426; 1987 a. 384; 1989 a. 335; 1995 a. 227 s. 514 to 520, 541, 576, 585; Stats. 1995 s. 289.01; 1997 a. 241.

20 **SECTION 47.** 295.11 (10) of the statutes is amended to read:

21 295.11 (10) "Solid waste" means any garbage, refuse, sludge from a waste  
22 treatment plant, water supply treatment plant or air pollution control facility and  
23 other discarded or salvageable materials, including solid, liquid, semisolid, or



1 contained gaseous materials resulting from industrial, commercial, mining and  
 2 agricultural operations, and from community activities, but does not include solids  
 3 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
 4 return flows or industrial discharges which are point sources subject to permits  
 5 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
 6 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
 7 ~~(3)~~ (1) ✓

History: 1995 a. 227 s. 801, 995; 1997 a. 27. ✓

8 **SECTION 9123. Nonstatutory provisions; health and family services.** ✓

9 (1) LICENSES UNDER STATE AGREEMENT WITH THE U. <sup>Delete space</sup> S. ~~NUCLEAR REGULATORY~~ <sup>No Initial caps</sup>

10 <sup>No Initial caps</sup> COMMISSION. Any person who, on the effective date of an agreement specified under  
 11 section <sup>Delete space</sup> 254.335 <sup>lc</sup> of the statutes, as created by this act, possesses a license issued by  
 12 the U. <sup>lc</sup> S. ~~Nuclear Regulatory Commission~~ <sup>lc</sup> that is subject to the agreement is  
 13 considered to possess a specific license issued under section 254.365 (1) (a) ✓ of the  
 14 statutes, as created by this act, or to fulfill requirements specified for a general  
 15 license under section 254.365 (1) (b) ✓ of the statutes, as created by this act. The  
 16 specific license expires 90 days after the date of receipt by the person from the  
 17 department of health and family services of a notice of expiration of the license or on  
 18 the date of expiration that was specified in the license issued by the U. <sup>Delete Space</sup> S. ~~Nuclear~~ <sup>lc</sup>  
 19 ~~Regulatory Commission~~ <sup>lc</sup>, whichever is earlier.

20 **SECTION 9323. Initial applicability; health and family services.** ✓

21 (1) TRANSFER OF RADIATION INSTALLATION. The treatment of section <sup>✓</sup> 254.35 (2) <sup>✓</sup>  
 22 the statutes first applies to transfers of radiation installations that are made <sup>✓</sup> 16 days  
 23 after the effective date of this subsection.

① (2) FORFEITURES FOR RADIATION VIOLATIONS. The treatment of section 254.45<sup>↓</sup> of  
② the statutes first applies to violations committed<sup>d</sup> on the effective date of this  
3 subsection. (End) ← ③

Sorry - I eliminated this somehow

D-NOTE

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1164/1dn

DAK...f:....

WLJ  
+  
JG

To Sue Jablonsky:

1. With respect to the changes proposed to s. 254.31<sup>✓</sup>, stats., please note the following:
  - a. I renumbered very few of the provisions proposed for this section (and throughout the draft); in general, unless it is necessary to provide space for a large quantity of new material or to relocate poorly located material, we limit renumbering because it impairs the tracing of legislative history, may result in ambiguity or error and is expensive.
  - b. I did not draft the definition of "department" proposed; see s. 250.01 (2)<sup>✓</sup>, stats.
  - c. I did not draft the definition of "forfeiture" proposed; see s. 939.12<sup>✓</sup>, stats.
  - e. Instead of drafting the definition of "general license", which is not a term used in the draft, I drafted a definition of "generally licensed device<sup>6</sup>". Please review. ←
  - f. I drafted the amended language for the definition of "ionizing radiation", but, because the proposed language was exceedingly unclear, am uncertain if I captured your intent. Please review.
  - g. I did not draft the definition of "person" proposed; see s. 990.01 (26)<sup>✓</sup>, stats. Moreover, the language proposed appears to constitute legislation by this state to regulate actions by another state, which is prohibited by our state's jurisdiction and various other laws.
  - h. Please review the definition of "radiation generating equipment"; the proposed material was unclear and I'm unsure if I've captured the intent.
  - i. Please review the definition of "radioactive material"; the proposed material was unclear and I'm unsure if I've captured the intent.
  - j. I did not draft a definition of "specific license"; the references to "specific license" in the draft refer back to s. 254.365 (1) (a)<sup>✓</sup> STET
2. I did not draft the proposed amendment to s. 254.33<sup>✓</sup>, stats., since it contained a substantive prohibition. Please see s. 254.365 (1)<sup>✓</sup> STET
3. With respect to the federal-state agreements, drafted as s. 254.335<sup>6</sup>, the following issues arose:
  - a. Under 42 U.S.C. 2021 (b) (2), the U. S. Nuclear Regulatory Commission may enter into agreements with governors concerning byproduct materials that are defined in 42 (U.S.N.R.C.)

U.S.C. 2014 (e) (1) and (2); the second definition of "by-product materials" under 42 U.S.C. 2014 (e) (2) refers to "... tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content". The definition of "by-product material" in s. 254.31 (3), stats., does not contain this second definition. Is it your intent that the Governor enter into agreements about by-product material with respect to only the first definition?

b. Is it expected that the governor will enter into these agreements by July 1, 2002? If so, and if continuing power to enter into agreement is not necessary, this should be drafted as a nonstatutory provision.

c. I have drafted proposed transitional language about the status of licenses in the nonstatutory provisions, on the assumption that the governor will enter into the agreements this coming biennium and that 90 days after the department sends out a notice of expiration will have been completed by July 1, 2002. Correct? Should the licenses be differentiated as to specific or general licenses? Does the fulfillment of requirements for general licenses expire after the 90 days?

No CHANGES

d. I have not drafted reference to "standards and guidelines developed by national and international organizations" under s. 254.34 (1) (a), because the language is vague. Further, under s. 254.34 (1) (a) as drafted, the application of state law is determined by future federal law and regulations and the standards of the organizations specified; this may result in an invalid delegation of state lawmaking power to the federal government or to the organizations under Article IV, section 1, of the Wisconsin Constitution. Lastly, are the corporate names of the organizations exactly correct?

U.S.N.R.C.

4. Please review s. 254.365. I do not understand and therefore did not draft the instructions to "... assess a fee to existing and future ~~United States Nuclear Regulatory Commission~~ licenses to fund development of a state radioactive materials licensing and regulatory program ..." How does the department have jurisdiction over the licensees to assess such a fee? The fees are deposited in the appropriation under s. 20.435 (1) (gm), stats., the general licensing appropriation, from which moneys are expended for licensing, review and certifying activities; I do not know what is meant by reference to a "state radioactive materials licensing and regulatory program", other than the activities under the subchapter that is being amended. Lastly, the proposed material contained a standard "compatibility" with regulations of the U.S.N.R.C.) that differed from the standard set forth (and amended to include licensure) in s. 254.34 (1) (a), stats.; I adhered to the standard in s. 254.34 (1) (a), stats.

WFO - Fix quote

5. Please review my changes to s. 254.35 (2), stats. I wanted to ensure that the installation did not have an unregistered period, since that is prohibited under s. 254.35 (1), stats. I have provided an initial applicability provision for this subsection, which would first apply the changes to transfers made 16 days after the effective date; I was attempting to make it possible for a registrant and a transferee to comply with the new requirements. However, this means that transfers of radiation installations that occur within those 16 days would transfer the registration to the new owner. Is this acceptable?

6. Please review my changes to s. 254.37 (1), stats. I have attempted to clarify the language.

7. There is a direct conflict between language in s. 254.37 (2) and (4), stats., concerning enforcement of orders by the department and by the attorney general. Also, the title of s. 254.37 (4), stats., as amended as proposed, now is not broad enough to cover the entire subject matter of that subsection. *This should be resolved.*

8. Please review s. 254.45. I did not draft proposed provisions that were self-conflicting, such as those requiring the department to set daily forfeiture amounts by rule and, at the same time, establishing in statute a daily forfeiture amount. I also did not draft authority for the department to waive, reduce or increase forfeitures; if the department intends to waive a forfeiture, it need not bring prosecution, and if the department sets the amount of forfeiture, presumably it does not need to reduce or increase that amount. I did not provide for deposit of forfeitures in the general fund; <sup>cc</sup> Article X, section 2, of the Wisconsin Constitution requires that moneys that accrue to the state by forfeiture be deposited in the school fund. Because it appears that the department was unaware that amounts of forfeitures cannot be used to supplement the department, I did not draft the two last factors proposed to be used in determining the amount of the forfeiture (the actual cost to the department of enforcing the provisions of this subchapter or rules developed under this subchapter and the cost of any mitigation to property or the environment caused by the violation); there is no program for mitigation. Lastly, I did not draft the provision referring to s. 102.57, stats.; although I recognize that the provision is in current law under s. 254.45, it is unnecessary and repetitive, given the general application of s. 102.57, stats.

9. Should s. 49.857 (1) (d) 4., 73.0301 (1) (d) 3. or 250.041<sup>(Stats.)</sup> be amended to include registrations under s. 254.35<sup>(Stats.)</sup> or licenses under s. 254.365 (1) (a) or (b)?

10. Because the licensing requirements and fee amounts, etc., for s. 254.365 (1) (a) and (b) are to be specified by rule, shouldn't you have a delayed effective date for s. 254.365? What would it be? What about the changes to s. 254.37 (3)? Any others? <sup>stats.</sup> Emergency rule-making powers? This also affects the initial applicability provision on forfeitures. *This needs to be resolved.*

Debora A. Kennedy  
Assistant Chief Counsel  
266-0137

11. For the references in <sup>ss.</sup> s. 254.34 (1) (a), stats., and 254.365 (1), the proposed material refers to the "National Council on Radiation Protection and Measurements." Section 254.35 (4), stats., currently refers to the "National Committee on Radiation Protection and Measurements". Which is correct? Is the ~~national~~ Conference of Radiation Control Program Directors a corporation and, if so, is this the exact corporate title? If not, what is it?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1164/1dn  
DAK:wlj&jlg:hmh

Tuesday, January 12, 1999

To Sue Jablonsky:

1. With respect to the changes proposed to s. 254.31, stats., please note the following:
  - a. I renumbered very few of the provisions proposed for this section (and throughout the draft); in general, unless it is necessary to provide space for a large quantity of new material or to relocate poorly located material, we limit renumbering because it impairs the tracing of legislative history, may result in ambiguity or error and is expensive.
  - b. I did not draft the definition of "department" proposed; see s. 250.01 (2), stats.
  - c. I did not draft the definition of "forfeiture" proposed; see s. 939.12, stats.
  - e. Instead of drafting the definition of "general license", which is not a term used in the draft, I drafted a definition of "generally licensed devices". Please review.
  - f. I drafted the amended language for the definition of "ionizing radiation", but, because the proposed language was exceedingly unclear, am uncertain if I captured your intent. Please review.
  - g. I did not draft the definition of "person" proposed; see s. 990.01 (26), stats. Moreover, the language proposed appears to constitute legislation by this state to regulate actions by another state, which is prohibited by our state's jurisdiction and various other laws.
  - h. Please review the definition of "radiation generating equipment"; the proposed material was unclear and I'm unsure if I've captured the intent.
  - i. Please review the definition of "radioactive material"; the proposed material was unclear and I'm unsure if I've captured the intent.
  - j. I did not draft a definition of "specific license"; the references to "specific license" in the draft refer back to s. 254.365 (1) (a).
2. I did not draft the proposed amendment to s. 254.33, stats., since it contained a substantive prohibition. Please see s. 254.365 (1).
3. With respect to the federal-state agreements, drafted as s. 254.335, the following issues arose:
  - a. Under 42 USC 2021 (b) (2), the U.S. Nuclear Regulatory Commission (U.S.N.R.C.) may enter into agreements with governors concerning by-product materials that are

defined in 42 USC 2014 (e) (1) and (2); the second definition of "byproduct materials" under 42 USC 2014 (e) (2) refers to "... tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content". The definition of "by-product material" in s. 254.31 (3), stats., does not contain this second definition. Is it your intent that the governor enter into agreements about by-product material with respect to only the first definition?

b. Is it expected that the governor will enter into these agreements by July 1, 2002? If so, and if continuing power to enter into agreement is not necessary, this should be drafted as a nonstatutory provision.

c. I have drafted proposed transitional language about the status of licenses in the nonstatutory provisions, on the assumption that the governor will enter into the agreements this coming biennium and that 90 days after the department sends out a notice of expiration will have been completed by July 1, 2002. Correct? Should the licenses be differentiated as to specific or general licenses? Does the fulfillment of requirements for general licenses expire after the 90 days?

d. I have not drafted reference to "standards and guidelines developed by national and international organizations" under s. 254.34 (1) (a), because the language is vague. Further, under s. 254.34 (1) (a), as drafted, the application of state law is determined by future federal law and regulations and the standards of the organizations specified; this may result in an invalid delegation of state lawmaking power to the federal government or to the organizations under article IV, section 1, of the Wisconsin Constitution. Lastly, are the corporate names of the organizations exactly correct?

4. Please review s. 254.365. I do not understand and therefore did not draft the instructions to "... assess a fee to existing and future U.S.N.R.C. licenses to fund development of a state radioactive materials licensing and regulatory program ... " How does the department have jurisdiction over the licensees to assess such a fee? The fees are deposited in the appropriation under s. 20.435 (1) (gm), stats., the general licensing appropriation, from which moneys are expended for licensing, review and certifying activities; I do not know what is meant by reference to a "state radioactive materials licensing and regulatory program", other than the activities under the subchapter that is being amended. Lastly, the proposed material contained a standard ("compatibility" with regulations of the U.S.N.R.C.) that differed from the standard set forth (and amended to include licensure) in s. 254.34 (1) (a), stats.; I adhered to the standard in s. 254.34 (1) (a), stats.

5. Please review my changes to s. 254.35 (2), stats. I wanted to ensure that the installation did not have an unregistered period, since that is prohibited under s. 254.35 (1), stats. I have provided an initial applicability provision for this subsection, which would first apply the changes to transfers made 16 days after the effective date; I was attempting to make it possible for a registrant and a transferee to comply with the new requirements. However, this means that transfers of radiation installations that occur within those 16 days would transfer the registration to the new owner. Is this acceptable?

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11. For the references in ss. 254.34 (1) (a), stats., and 254.365 (7), the proposed material refers to the "National Council on Radiation Protection and Measurements". Section 254.35 (4), stats., currently refers to the "national committee on radiation protection and measurements". Which is correct? Is the Conference of Radiation Control Program Directors a corporation and, if so, is this the exact corporate title? If not, what is it?

Debora A. Kennedy  
Assistant Chief Counsel  
266-0137



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1164/1dn  
DAK:wj&jlg:hmh

Tuesday, January 12, 1999

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  - ✓ b. I did not draft the definition of "department" proposed; see s. 250.01 (2), stats.
  - c. I did not draft the definition of "forfeiture" proposed; see s. 939.12, stats.
  - ✓ e. Instead of drafting the definition of "general license", which is not a term used in the draft, I drafted a definition of "generally licensed devices". Please review.
  - ✓ f. I drafted the amended language for the definition of "ionizing radiation", but, because the proposed language was exceedingly unclear, am uncertain if I captured your intent. Please review.
  - ✓ g. I did not draft the definition of "person" proposed; see s. 990.01 (26), stats. Moreover, the language proposed appears to constitute legislation by this state to regulate actions by another state, which is prohibited by our state's jurisdiction and various other laws.
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  - ✓ i. Please review the definition of "radioactive material"; the proposed material was unclear and I'm unsure if I've captured the intent.
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- ✓ 2. I did not draft the proposed amendment to s. 254.33, stats., since it contained a substantive prohibition. Please see s. 254.365 (1).
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defined in 42 USC 2014 (e) (1) and (2); the second definition of "byproduct materials" under 42 USC 2014 (e) (2) refers to "... tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content". The definition of "by-product material" in s. 254.31 (3), stats., does not contain this second definition. Is it your intent that the governor enter into agreements about by-product material with respect to only the first definition?

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\*  
✓ 4. Please review s. 254.365. I do not understand and therefore did not draft the instructions to "... assess a fee to existing and future U.S.N.R.C. licenses to fund development of a state radioactive materials licensing and regulatory program ...". How does the department have jurisdiction over the licensees to assess such a fee? The fees are deposited in the appropriation under s. 20.435 (1) (gm), stats., the general licensing appropriation, from which moneys are expended for licensing, review and certifying activities; I do not know what is meant by reference to a "state radioactive materials licensing and regulatory program", other than the activities under the subchapter that is being amended. Lastly, the proposed material contained a standard ("compatibility" with regulations of the U.S.N.R.C.) that differed from the standard set forth (and amended to include licensure) in s. 254.34 (1) (a), stats.; I adhered to the standard in s. 254.34 (1) (a), stats.

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Debora A. Kennedy  
Assistant Chief Counsel  
266-0137

## Kennedy, Debora

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**From:** Jablonsky, Sue [sue.jablonsky@doa.state.wi.us]  
**Sent:** Friday, January 15, 1999 4:09 PM  
**To:** Kennedy, Debora  
**Subject:** FW: Radiation Monitoring Statutory Language-Response to Drafter'



254response\_1.doc

comments on agreement state language-hope you get this

> -----Original Message-----  
> From: Chao, Richard  
> Sent: Friday, January 15, 1999 2:31 PM  
> To: Jablonsky, Sue  
> Subject: Radiation Monitoring Statutory Language-Response to Drafter'  
>  
> Dear Sue:  
>  
> Attached is a copy of the Department's responses to LRB's question  
> regarding the  
> Radiation Monitoring Statutory Language Request. Thank you for the  
> opportunity  
> to provide feedback.  
>  
> In addition, I spoke with Deb Kennedy regarding the EMS fees and fines  
> statutory  
> language, and we seemed to have resolved her questions.  
>  
> I still have not received the additional copy of the HIRSP/ADRP stat lang.  
>  
> Call if you have any questions,  
> Have a nice long weekend,  
> Rich  
>  
> Richard T. Chao  
> Budget Section  
> Department of Health and Family Services  
> (608) 267-0356  
> <<254response\_1.doc>>

(\*) Conflict

Response to Legislative Reference Bureau comments  
WI Stats 254.31 - .45 revision

1.
  - ✓ a. Thank you for correcting our tendency to renumber.
  - ✓ b. Agree. Definition in s. 250.01 (2) is acceptable. We assume by your comments there is no need to duplicate the definition of 'Department' in this statutory reference if it exists elsewhere.
  - No ✓ c. S. 939.12 does not define forfeiture. Forfeiture should be defined, as proposed, unless there is an existing definition of forfeiture elsewhere in WI Stats.
  - ✓ e. Disagree. The statute must contain a definition of general license to meet NRC requirements. Define as follows: "General license" means a license effective under rules of the department to possess byproduct (radioactive) material, or devices or equipment utilizing byproduct (radioactive) material without the filing of an application or the issuance of licensing documents.  
**Note:** A general license is an umbrella license that allows a specifically licensed manufacturer to sell certain radioactive items to a person that is not specifically licensed, and allows the person purchasing the items to possess and use them without a specific license.

Delete definition of generally-licensed devices.

- ✓ f. Agree.
- ✓ g. Agree, only if the definition of "person" in s. 990.01 (26) applies to businesses, individuals and corporations.
- ✓ h. Disagree. Definition should read: "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material.
- ✓ i. Disagree. The definition must read: "Radioactive material" includes any solid, liquid or gaseous substance which emits radiation spontaneously, including accelerator-produced, byproduct, naturally occurring, source material and special nuclear material. **Note:** The definition contains the 5 categories of radioactive material.
- ✓ j. Disagree. The statute must contain a definition for specific license to meet NRC requirements. Define as follows: "Specific license" means a license issued by the department to a person upon application filed under rules promulgated under this subchapter, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing radioactive material.

✓ 2. Agree.

3.

- ✓ a. We suggest the following option. s. 254.335 should read as follows: The governor may, on behalf of the state, enter into agreements with the U.S nuclear regulatory commission, as provided in the Atomic Energy Act of 1954, as amended (specifically 42 USC 2021 (b) (2) ), to discontinue certain federal licensing and related regulatory authority with respect to by-product, source and special nuclear material and to assume state regulatory authority. **Note:** The NRC prefers that the reference to the Atomic Energy Act of 1954, as amended, be somehow included in this statement.

No -  
use  
defined  
terms

No - US Code cite is suff.

- ✓ We agree with your definition of byproduct material. Define as follows: "By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content" **Note:** The agreement in question will transfer regulatory authority over byproduct (all types), source and special nuclear materials (excluding those at nuclear power plants and federal facilities) to the state.
- ✓ b. The authority for the governor to enter into the agreement should remain in the statute, as proposed. The Governor and the NRC will sign the agreement approximately July 1, 2002. The NRC prefers the authority in question to be in state radiation statutes.
- ✓ c. Incorrect assumption. The agreement between the Governor and the NRC will not be finalized until July 1, 2002, or shortly thereafter. As such, we believe the transition language should remain in the statutes, as originally proposed. The licenses do not need to be differentiated between specific and general as far as the transition of regulatory authority is concerned. A specific license is issued to a person. A general license is not issued to any person. It is an umbrella license established by the regulatory agency that allows a person to purchase and possess specific radioactive materials or devices containing those materials without obtaining a specific license. The general license also allows a company with a specific license to sell those materials or devices to a person that does not have a specific license. As such, the 90-day expiration only applies to a specific license, not the general license. **Note:** We realize this is a messy concept. More dialogue may be necessary.
- ✓ d. Agree with changes made to 254.34 (1) (a), with two critical exceptions. The third sentence in 254.34 (1) (a) must read as follows: "The rules for byproduct, source and special nuclear material may be no less stringent than the requirements under 42 USC 2071 to 2114 and regulations adopted under 42 USC 2071 to 2114".
- ⊛ The fourth sentence in 254.34<sup>A (1)</sup>(a) should read as follows: " Rules for naturally occurring and accelerator-produced radioactive materials and for x-ray devices may be no less stringent than the most recent standards and guidelines of nationally recognized bodies in the field of radiation protection." **Note:** We prefer not to limit ourselves by mentioning two or three specific organizations, unless absolutely necessary. Also, is the reference to 42 USC 2071 to 2114 analogous to the original statement "regulations adopted by the U.S. Nuclear regulatory Commission specifically for the regulation of by-product, source and special nuclear material"?
- ✓ 4. It is crucial to reinstate a version of the following statements: "The department may assess a separate annual fee on or after the effective date of this statute to any person in Wisconsin holding a United States Nuclear Regulatory Commission specific license. This fee shall terminate upon transfer of regulatory authority over by-product, source and special nuclear material to the state." Please add language or place the statements such that authority to assess the fee is effective on the effective date of the SFY 2000-2001 biennial budget bill (i.e., during 1999). **Note:** The Governor has directed the department to pursue an agreement with the NRC to transfer regulatory authority over specific radioactive materials to the state. The state must develop a regulatory program equivalent to the NRC program prior to signing the agreement transferring regulatory authority. Necessary position and

fiscal authority requests are contained in the SFY 2000-2001 biennial budget bill. We propose to fund program development by assessing a state surcharge fee on each NRC specific license in Wisconsin. The NRC annually assesses a license renewal fee to existing NRC licensees. Our intent is to assess an additional annual state surcharge fee of 36% of each existing NRC annual license fee. This surcharge fee must apply to all NRC specific licenses in Wisconsin, both existing and new, during the multi-year period leading up to the agreement. The NRC has no control over a state that chooses to assess this type of fee since the state is not regulating NRC licensed activities or reducing NRC revenue by simply assessing a separate fee. Ohio currently uses the license surcharge method to fund their agreement state program development. The surcharge fee ends once the transfer of regulatory authority agreement is signed between the governor and the NRC. Wisconsin licensees are willing to pay this temporary license surcharge fee since agreement state status will ultimately result in lower state radioactive material license fees. IF YOU HAVE ANY REMAINING QUESTIONS ABOUT THE SURCHARGE FEE LANGUAGE, PLEASE CONTACT US.

✓\* You are correct in stating that our reference to a 'state radioactive materials licensing and inspection program' means the activities under the subchapter that is being amended.

✓\* We agree with your handling of the necessary compatibility with regulations of the U.S. NRC.

✓5. Agree with all changes made.

✓6. Agree.

✓7. The language in 254.37 (4) is historic. We question its' necessity. If it is not needed, please delete. Is it necessary to designate the judicial body (i.e., Dane County circuit court) that will preside over a trial (i.e, someone who does not abide by an order), or is this specified in other statutes?

✓8. Agree. Thank you for improving this important section.

✓9. We trust your judgement on this. We do not know the implications of adding reference to 254.35 and 254.365 to s. 49.857, 73.0301, and 250.041.


✓10. Yes, we should delay the effective date of s. 254.365 until the effective date of the agreement between NRC and the state that transfers regulatory authority. The effective date of the agreement is projected to be 7-1-2002, or shortly thereafter. All other sections in the proposed statutes must become effective upon the effective date of the SFY 2000-2001 biennial budget bill (i.e., should not be delayed).

✓-The effective date of 254.37 (3) should not be delayed, as it applies to current x-ray device regulation.

✓The department currently has emergency rule making authority. Does it need to be repeated here? If so, please add appropriate language.

✓11. The National Council on Radiation Protection and Measurements is the correct title. The Conference of Radiation Control Program Directors, Inc. (exact corporate title) is incorporated in Kentucky.

OTHER

- ✓ 1. 254.365 (7) is too prescriptive and inaccurate. Please revise as follows: "The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard, according to the most recent standards and guidelines prescribed by nationally recognized bodies in the field of radiation protection." 
- ✓ 2. Please revise 254.365 (5) (a) 3 by deleting the words 'prior to the renewal date'. Item 3 should read: Termination of a license.