



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

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

Do Not  
 GEN CAT

1 AN ACT ...; 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

devices ✓

INSERT A 1 ✓

, as of July 1, 2002, ✓

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. ✓

Specific

INSERT A 2 ✓

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.

and for requirements for general licenses ✓

Lastly, the bill authorizes DHFS to issue emergency orders to protect the public from radiation exposure; 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.

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

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.

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  
8           not include any release of radiation from radioactive waste being transported under  
9           routine operations.

10           **SECTION 3.** 254.31 (2) of the statutes is created to read:

1           254.31 (2) "Decommissioning" means conducting final operational activities at  
2 a nuclear facility to dismantle site structures, to decontaminate site surfaces and  
3 remaining structures, to stabilize and contain residual radioactive material and to  
4 carry out any other activities necessary to prepare the site for postoperational care.

5           **SECTION 4.** 254.31 (2m) of the statutes is created to read:

254.31 (2m) "Generally licensed devices" means devices that meet the general  
~~license requirements under s. 254.365 (2) (a).~~ INSERT 3-7 ✓

6           **SECTION 5.** 254.31 (3) of the statutes is renumbered 254.31 (1) <sup>(intro.)</sup> and amended to  
7 read:

8           **SECTION 6.** 254.31 (3g) of the statutes is repealed and recreated to read:

9           254.31 (3g) "Ionizing radiation" means all radiations capable of producing ions  
10 directly or indirectly in their passage through matter, including all of the following:

- 11           (a) Electromagnetic radiations, including X-rays and gamma rays.
- 12           (b) Particulate radiations, including electrons, beta particles, protons,
- 13           neutrons, alpha particles and other nuclear particles.

14           **SECTION 7.** 254.31 (5) of the statutes is created to read:

15           254.31 (5) "Radiation generating equipment" means a system, manufactured  
16 product or device or component part of such a product or device that, during  
17 operation, is capable of generating or emitting <sup>ionizing</sup> radiation ~~from material other than~~  
18 radioactive material. "Radiation generating equipment" does not include a device  
19 that emits nonionizing radiation. without the use of

20           **SECTION 8.** 254.31 (6) of the statutes is amended to read:

21           254.31 (6) "Radiation installation" is any location or facility where radiation  
22 ~~machines are generating equipment is~~ used or where radioactive material is  
23 produced, transported, stored, disposed of or used for any purpose.

24           **SECTION 9.** 254.31 (7) of the statutes is repealed.

✓  
FIX COMPONENT 6  
7  
8  
INSERT 3-8

1           **SECTION 10.** 254.31 (8) of the statutes is renumbered 254.31 (9m) and amended  
2 to read:

3           254.31 (9m) "Radioactive material" includes any solid, liquid or gaseous  
4 substance which emits ionizing radiation spontaneously, including  
5 accelerator-produced by-product, naturally occurring source material and special  
6 nuclear material.           *material*           *material*           *material*

7           **SECTION 11.** 254.31 (9) of the statutes is amended to read:

8           254.31 (9) "Radiation source" means a radiation machine generating  
9 equipment or radioactive material as defined herein.

✓  
INSERT 4-9J

10           **SECTION 12.** 254.31 (11m) of the statutes is created to read:

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

13           **SECTION 13.** 254.31 (12) of the statutes is amended to read:

14           254.31 (12) "X-ray tube" means any electron tube which is specifically  
15 designed for the conversion of electrical energy into X-ray energy.

16           **SECTION 14.** 254.33 of the statutes is amended to read:

17           **254.33 Public policy.** Since radiations and their sources can be instrumental  
18 in the improvement of the health and welfare of the public if properly utilized, and  
19 may be destructive or detrimental to life or health if carelessly or excessively  
20 employed or may detrimentally affect the environment of the state if improperly  
21 utilized, it is hereby declared to be the public policy of this state to encourage the  
22 constructive uses of radiation and to prohibit and prevent exposure to radiation in  
23 amounts which are or may be detrimental to health. It is further the policy for the  
24 department to advise, consult and cooperate with ~~the department of commerce and~~  
25 other agencies of the state, the federal government, other states and interstate

1 agencies and with affected groups, political subdivisions and industries; and, in  
2 general, to conform as nearly as possible to nationally accepted standards in the  
3 promulgation and enforcement of rules.

(S)  
transition  
(1) (E)

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

5 **254.335 Agreements with the U.S. nuclear regulatory commission.** The  
6 governor may, on behalf of the state, enter into agreements with the U.S. nuclear  
7 regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain  
8 federal licensing and related regulatory authority with respect to by-product  
9 material, source material and special nuclear material and to assume state  
10 regulatory authority.

✓  
INSEPT  
MATERIAL  
FROM  
P. 18,  
lines  
13-22  
HERE

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

12 254.34 (1) (intro.) The department ~~and the department of commerce~~ is the state  
13 radiation control agency and shall do all of the following:

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

15 254.34 (1) (a) ~~Formulate, adopt and enforce, amend and repeal~~ Promulgate and  
16 enforce rules, including registration and licensing of sources of ionizing radiation, as  
17 may be necessary to prohibit and prevent unnecessary radiation. ~~Such exposure.~~  
18 The rules may incorporate by reference the recommended standards of nationally  
19 recognized bodies in the field of radiation protection and other fields of atomic energy,  
20 under the procedure established by s. 227.21 (2). ~~The rules may be no less stringent~~  
21 than the requirements under 42 USC 2071 to 2114 and regulations adopted under  
22 42 USC 2071 to 2114. Rules for naturally occurring and accelerator-produced  
23 radioactive materials and for X-rays <sup>devices</sup> may be no less stringent than the most recent  
24 standards and guidelines ~~specified by the Conference of Radiation Control Program~~

for by-product material,  
source material and special nuclear material

**SECTION 17**

1 ~~Directors, the American College of Radiology and the national council on radiation~~  
2 ~~protection and measurements.~~ ✓ of nationally recognized bodies in the  
3 field of radiation protection

SECTION 18. 254.34 (1) (c) of the statutes is renumbered 254.34 (1) (c) (intro.)

and amended to read:

254.34 (1) (c) (intro.) Develop comprehensive policies and programs for the  
evaluation and, determination and reduction of hazards associated with the use of  
radiation, ~~and for their amelioration.~~ that are compatible with requirements of the  
U.S. nuclear regulatory commission for the regulation of by-product material,  
source material and special nuclear material. The department shall maintain all of  
the following records:

SECTION 19. 254.34 (1) (c) 1. of the statutes is created to read:

254.34 (1) (c) 1. Files of all license applications, issuances, denials, transfers,  
renewals, modifications, suspensions and revocations under s. 254.365.

SECTION 20. 254.34 (1) (c) 2. of the statutes is created to read:

254.34 (1) (c) 2. Files of all registrants under s. 254.35 and any related  
administrative or judicial action.

SECTION 21. 254.34 (2) (intro.) of the statutes is amended to read:

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

SECTION 22. 254.34 (4) of the statutes is renumbered 254.34 (1) (h) 5.

✓  
INSERT 6-20

SECTION 23. 254.35 (1) of the statutes is amended to read:

254.35 (1) APPLICATION. ~~Every~~ For every site in this state ~~having that has an~~  
ionizing radiation installation, that is 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 the~~ installation, including installations in sites that are administered

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

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

20 254.35 (2) AMENDED REGISTRATION. If the person in control increases the  
21 number of sources, source strength, rated output or energy of radiation produced in  
22 any installation, he or she shall notify the department of the increase prior to  
23 operation on the revised basis. The department shall record the change in the  
24 registration. No registration is transferable from one premises to another or from  
25 one person to another. If the person in control ~~transfers~~ intends to transfer control

1 of ownership of the radiation installation to another person ~~the registration also~~  
2 ~~transfers to the other person, who, at least 15 days before the final transfer the~~  
3 registrant shall notify the department of the transfer ~~within 15 days. The~~  
4 ~~department shall record the change in the~~ and the intended transferee shall file  
5 under sub. (1) an application for registration. If any installation is discontinued, the  
6 person in control shall notify the department within 30 days of the discontinuance.

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

8 254.35 (3) (title) ~~FEES~~ REGISTRATION FEES.

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

10 254.35 (3) (a) An annual registration fee under pars. (b) to (f) (~~fm~~) shall be  
11 levied for each site registration under this section. An additional penalty fee of \$10  
12 \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be  
13 required for each registration whenever the annual fee for renewal is not paid prior  
14 to expiration of the registration. No additional fee may be required for recording  
15 changes in the registration information.

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

17 254.35 (3) (b) For a ~~medical~~ site having an ionizing radiation installation  
18 serving physicians and clinics, osteopaths and clinics, ~~and~~ chiropractors or hospitals  
19 that possesses radioactive materials in any quantity, the fee shall be at least ~~\$25~~ \$36  
20 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

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

22 254.35 (3) (c) For a ~~chiropractic~~, podiatric or veterinary site having an ionizing  
23 radiation installation, the fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~  
24 \$44 for each X-ray tube.

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



1           254.35 (3) (d) For a dental site having an ionizing radiation installation, the  
2 fee shall be at least ~~\$25~~ \$36 for each site and at least ~~\$20~~ \$30 for each X-ray tube.

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

4           254.35 (3) (f) For an industrial, school, research project or other site having an  
5 ionizing radiation installation ~~and radioactive materials in any quantity~~, the fee  
6 shall be at least ~~\$25~~ \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

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

8           254.35 (3) (fm) For any site that has generally licensed devices that are not  
9 exempted by the department, the fee shall be at least \$100 for each site and at least  
10 \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq  
11 or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi  
12 of a transuranic.

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

14           254.35 (3) (g) The fees under this subsection shall be as stated unless the  
15 department promulgates rules to increase the annual registration fee ~~after January~~  
16 ~~1, 1986~~, for a site having an ionizing radiation installation ~~or~~, for an X-ray tube or  
17 for generally licensed devices that are not exempted by the department.

18           **SECTION 33.** 254.35 (4) of the statutes is amended to read:

19           254.35 (4) EXEMPTIONS. ~~The department shall~~ After initial registration under  
20 sub. (1), the department may exempt from annual registration any source licensed  
21 ~~by the nuclear regulatory commission and may exempt from registration any source~~  
22 ~~of radiation installation which~~ of radiation that the department finds to be without  
23 undue radiation hazard as determined by standards established by the national  
24 ~~committee on radiation protection and measurements or any comparable nationally~~  
25 recognized agency established for the purpose of recommending standards for

council ✓

1 radiation protection, and after the initial registration may exempt from subsequent  
2 annual radiation requirements any source of radiation devoted primarily to  
3 industrial purposes.

4 **SECTION 34.** 254.36 of the statutes is renumbered 254.34 (1) (am) and amended  
5 to read:

6 254.34 (1) (am) ~~Radiation protection.~~ The department shall promulgate a  
7 radiation protection code. Other departments and agencies of state government and  
8 A rule identical to a rule specified under par. (a) may be promulgated by a state  
9 agency other than the department and an ordinance identical to a rule specified  
10 under par. (a) may be enacted by a local governmental units may adopt the identical  
11 code unit, but no other rule, code or ordinance relating to this subject may be  
12 promulgated or enacted may be promulgated or ordinance may be enacted that  
13 differs from a rule under par. (a) and relates to the same subject area except as  
14 provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

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

16 **254.365 Licensing of radioactive material. (1) LICENSE REQUIRED.** No  
17 person may possess, use, manufacture, transport, store, transfer or dispose of  
18 radioactive material or a device or item of equipment that uses radioactive material  
19 or may operate a site that uses radioactive material that is not under the authority  
20 of the U.S. nuclear regulatory commission unless one of the following applies:

21 (a) The person <sup>has a</sup> ~~is~~ specifically licensed <sup>issued</sup> ~~by~~ the department.

22 (b) The person meets ~~the~~ general license requirements <sup>✓</sup> ~~prescribed by the~~  
23 ~~department by rule to transfer, acquire, possess or use radioactive material or a~~  
24 ~~device or item of equipment that uses radioactive material.~~

1 (c) The person possesses a license issued by another state or by the U.S. nuclear  
2 regulatory commission that is reciprocally recognized by the department.

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

4 (2) APPLICATION. Application for a license under sub. (1) (a) or for reciprocal  
5 recognition under sub. (1) <sup>(c)</sup> shall be made on forms provided by the department.

6 (3) MODIFICATION OR TERMINATION OF LICENSE. Within 30 days after any change  
7 to the information on a license issued under this section, the licensee shall inform the  
8 department of the change and the department shall record the changed information.  
9 Within 30 days after termination of an activity licensed under this section, the person  
10 in control of the activity shall notify the department. The department may require  
11 that the person in control submit to the department for approval a plan for  
12 decommissioning the activity.

13 (4) RULES. The department shall promulgate <sup>specific</sup> rules for <sup>all of the following: (a)</sup> the issuance,  
14 modification, suspension, termination and revocation of licenses under sub. (1) (a)  
15 under the standards specified in s. 251.34 (1) (a).

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

18 1. Issuance of an initial or renewal <sup>specific</sup> license under sub. (1) (a).

19 2. Issuance of a license amendment.

20 3. Termination of a license ~~prior to the renewal date.~~

21 4. Issuance of reciprocal recognition of a license for radioactive materials of  
22 another state or the U.S. nuclear regulatory commission.

23 (b) The department may assess a late payment charge of 25% of the specific  
24 license renewal fee, in addition to the fee under par. (a) for renewal of a specific

1 license, if payment for renewal of a specific license is not made within 30 days after  
2 the license expiration date.

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

7 (7) EXEMPTION. The department may exempt from licensing requirements of  
8 this section radioactive material that the department finds is without undue  
9 radiation hazard, ~~under standards prescribed by the national council on radiation~~

10 ~~protection and measurements~~ *according to the most recent standards and*  
*guidelines of nationally*  
*recognized bodies in the field of* radiation  
11 **SECTION 36.** 254.37 (1) of the statutes is renumbered 254.37 (1) (intro.) and *protection*

INDEX  
A-10

*radiation protection*

12 amended to read:

13 254.37 (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. (intro.)

14 Whenever the department ~~or the department of commerce~~ finds, upon inspection and  
15 examination, that a source of radiation as constructed, operated or maintained  
16 results in a violation of this subchapter or of any rules promulgated under this  
17 subchapter, ~~it the department shall notify~~ do all of the following:

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

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

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

1           254.37 (2) ORDERS. The department ~~or the department of commerce~~ shall issue  
2 and enforce such orders or modifications of previously issued orders as may be  
3 required in connection with proceedings under this subchapter. The orders shall be  
4 subject to review by the department upon petition of the persons affected. Whenever  
5 the department ~~or the department of commerce~~ finds that a condition exists ~~which~~  
6 that constitutes an immediate threat to health due to violation of this subchapter or  
7 any rule or order promulgated under this subchapter, it may issue an order reciting  
8 the existence of the threat and the findings pertaining to the threat. The department  
9 ~~or the department of commerce~~ may summarily cause the abatement of the violation.

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

11           254.37 (3) RULES. The department shall promulgate and enforce the rules  
12 pertaining to ionizing radiation ~~in establishments principally engaged in furnishing~~  
13 ~~medical, surgical, chiropractic and other health services to persons and animals.~~ The  
14 department of commerce shall enforce the rules pertaining to ionizing radiation in  
15 industrial establishments. The department shall notify the department of commerce  
16 and deliver to it a copy of each new registration and at such time a decision shall be  
17 made as to which state agency shall enforce the rules pertaining to ionizing  
18 radiation.

19           **SECTION 39.** 254.37 (4) ~~(title)~~ ✓ of the statutes is amended to read:

20           ~~254.37 (4) (title) ENFORCEMENT JURISDICTION.~~

21           **SECTION 40.** 254.38 (title) of the statutes is created to read:

22           **254.38** (title) **Emergency authority.**

23           **SECTION 41.** 254.38 of the statutes is renumbered 254.38 (1) and amended to  
24 read:

✓  
INSERT  
✓ 13-20

1           254.38 (1) IMPOUNDING MATERIALS. The department ~~or department of commerce~~  
2 may impound or order the sequestration of sources of radiation in the possession of  
3 any person who is not equipped to observe or who fails to observe safety standards  
4 to protect health that are established in rules promulgated by the department ~~or the~~  
5 ~~department of commerce.~~

6           **SECTION 42.** 254.38 (2) of the statutes is created to read:

7           254.38 (2) EMERGENCY ORDERS. If the department finds that an emergency  
8 exists concerning a matter subject to regulation under this subchapter that requires  
9 immediate action to protect the public health or safety, the department may issue an  
10 emergency order without notice or hearing that recites the existence of the  
11 emergency and requires such action as is necessary to mitigate the emergency. Any  
12 person to whom the order is issued shall immediately comply with the order. A  
13 person to whom an emergency order is issued shall be afforded a hearing within 30  
14 days after receipt by the department of a written request for the hearing. An  
15 emergency order is effective upon issuance and remains in effect for up to 90 days  
16 after issuance, except that the order may be revoked or modified based on the results  
17 of the hearing.

18           **SECTION 43.** 254.39 (2) of the statutes is amended to read:

19           254.39 (2) This subchapter does not apply to on-site activities of any nuclear  
20 reactor plant licensed by the ~~nuclear regulatory commission~~ U.S. nuclear regulatory  
21 commission.

22           **SECTION 44.** 254.45 of the statutes is repealed and recreated to read:

23           **254.45 Penalties. (1) GENERAL.** (a) Any person who violates this subchapter  
24 or a rule promulgated under this subchapter or a condition of a license or registration  
25 issued by the department under this subchapter may be required to forfeit not less

1 than \$100 nor more than \$100,000. Each day of continued violation constitutes a  
2 separate offense.

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

5 1. The wilfulness of the violation.

6 2. The person's previous violations, if any, of this subchapter, rules  
7 promulgated under this subchapter or conditions of a license or registration issued  
8 by the department under this subchapter.

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

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

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

18 (3) HEARING. A person upon whom a forfeiture is imposed may contest the  
19 action by sending, within 10 days after receipt of notice of a contested action, a  
20 written request for hearing under s. 227.44 to the division of hearings and appeals  
21 created under s. 15.103 (1). The administrator of the division may designate a  
22 hearing examiner to preside over the case and recommend a decision to the  
23 administrator under s. 227.46. The decision of the administrator of the division shall  
24 be the final administrative decision. The division shall commence the hearing within  
25 30 days of receipt of the request for hearing and shall issue a final decision within

1 15 days after the close of the hearing. Proceedings before the division are governed  
2 by ch. 227.

3 (4) FORFEITURE PAYMENT AND DISPOSITION. (a) A person against whom the  
4 department has assessed a forfeiture shall pay the forfeiture to the department  
5 within 10 days after receipt of the notice under sub. (2) or, if the person contests the  
6 assessment, within 10 days after receipt of the final decision after exhaustion of  
7 administrative review. If the person petitions for judicial review under ch. 227, the  
8 person shall pay the forfeiture within 10 days after receipt of the final judicial  
9 decision.

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

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

16 **SECTION 45.** 281.01 (15) of the statutes is amended to read:

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



1 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
2 ~~(3)~~ (1).

3 **SECTION 46.** 285.01 (40) of the statutes is amended to read:

4 285.01 (40) "Solid waste" means any garbage, refuse, sludge from a waste  
5 treatment plant, water supply treatment plant or air pollution control facility and  
6 other discarded or salvageable materials, including solid, liquid, semisolid, or  
7 contained gaseous materials resulting from industrial, commercial, mining and  
8 agricultural operations, and from community activities, but does not include solids  
9 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
10 return flows or industrial discharges which are point sources subject to permits  
11 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
12 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
13 ~~(3)~~ (1).

14 **SECTION 47.** 289.01 (33) of the statutes is amended to read:

15 289.01 (33) "Solid waste" means any garbage, refuse, sludge from a waste  
16 treatment plant, water supply treatment plant or air pollution control facility and  
17 other discarded or salvageable materials, including solid, liquid, semisolid, or  
18 contained gaseous materials resulting from industrial, commercial, mining and  
19 agricultural operations, and from community activities, but does not include solids  
20 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
21 return flows or industrial discharges which are point sources subject to permits  
22 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
23 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
24 ~~(3)~~ (1).

25 **SECTION 48.** 295.11 (10) of the statutes is amended to read:

1           295.11 (10) "Solid waste" means any garbage, refuse, sludge from a waste  
 2 treatment plant, water supply treatment plant or air pollution control facility and  
 3 other discarded or salvageable materials, including solid, liquid, semisolid, or  
 4 contained gaseous materials resulting from industrial, commercial, mining and  
 5 agricultural operations, and from community activities, but does not include solids  
 6 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
 7 return flows or industrial discharges which are point sources subject to permits  
 8 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
 9 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
 10 (3) (1).

text: treat → (2) (B)

11           **SECTION 9123. Nonstatutory provisions; health and family services.**

INSERT 18-11

12           (1) ~~LICENSES UNDER STATE AGREEMENT WITH THE U.S. NUCLEAR REGULATORY~~

13           ~~COMMISSION.~~ Any person who, on the effective date of an agreement specified under  
 14 ~~section 254.335 of the statutes, as created by this act,~~ <sup>sub. (1) ✓</sup> possesses a license issued by  
 15 the U.S. nuclear regulatory commission that is subject to the agreement is  
 16 considered to possess a specific license issued under ~~section 254.365 (1) (a) of the~~ <sup>s. ✓</sup>  
 17 ~~statutes, as created by this act,~~ or to fulfill requirements specified for a general  
 18 license under ~~section 254.365 (1) (b) of the statutes, as created by this act.~~ <sup>s. ✓</sup> The  
 19 specific license expires 90 days after the date of receipt by the person from the  
 20 department <sup>of health and family services ✓</sup> of a notice of expiration of the license or on  
 21 the date of expiration that was specified in the license issued by the U.S. nuclear  
 22 regulatory commission, whichever is earlier.

MOVE THIS TO P. 5, line 10

23           **SECTION 9323. Initial applicability; health and family services.**

1           (1) TRANSFER OF RADIATION INSTALLATION. The treatment of section 254.35 (2) of  
2 the statutes first applies to transfers of radiation installations that are made 16 days  
3 after the effective date of this subsection.

4           (2) FORFEITURES FOR RADIATION VIOLATIONS. The treatment of section 254.45 of  
5 the statutes first applies to violations committed on the effective date of this  
6 subsection.

✓  
INSERT  
19-6  
7

(END)

D-NOTE

NO  
# generally ~~shall~~ the possession, use, transfer or  
 acquisition of radioactive by-product material  
 and to license specifically the possession, use,  
 manufacture, production, transfer or acquisition NO  
#

End of  
 INSERT

# The bill authorizes DHFS annually, until July 1, 2002, to assess a fee, prescribed by DHFS by rule, in this state to any person holding a specific license issued by the U.S. nuclear regulatory commission. The bill requires DHFS to promulgate rules establishing the fee on an emergency basis and exempts DHFS from making a finding of emergency for the rules.

(10) a license, under requirements prescribed by the department by rule, to by-product material or devices or equipment utilizing by-product material without <sup>the</sup> filing of a license application by a licensee or issuance of licensing confirmation by the department.

possess, use, transfer or acquire

End of  
INSERT

Section # 254.31(3) of the statutes is amended to read:

(1) (intro.)

of the following: (a) Radioactive

2

254.31 "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.

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

SECTION # .CR; 254.31 (b)

254.31 (b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

End of INSERT

SECTION # . CR; 254.31 (11g)

254.31 (11g) "Specific license" means a  
license to use, manufacture, produce, transfer or  
acquire ~~the possession~~ radioactive material or  
devices or equipment utilizing radioactive  
material.

, under requirements prescribed by the Department  
by rule,



SECTION #. CR; 254.345<sup>✓</sup>

254.345 <sup>(b)(c)</sup> ASSESSMENT OF FEE. <sup>(b)</sup> (1) The

department may annually assess a fee,  
the amount of which is prescribed by the department  
by rule, to any specific licensee of the U.S.  
nuclear regulatory commission in this state.

<sup>(b)</sup> (2) This section does not apply after  
June 30, 2002.<sup>✓</sup>

note The fee amounts shall be used by the  
department for the department's activities under  
this subchapter.<sup>✓</sup>

INSERT 13-20

Section #. 254.37 (4) of the statutes is amended to read:

(5)  
JURISDICTION ✓

254.37 (4) ✓ ENFORCEMENT. 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.

1999

INSERT 18-11

Nonstat File Sequence: **AAA**

LRB \_\_\_\_\_/\_\_\_\_

\_\_\_\_\_:\_\_\_\_:\_\_\_\_

**NONSTAT SESSLAW**

1. In the component bar:

For the action phrase, execute: ..... create → action: → \*NS: → nonstat

For the budget action phrase, execute: ..... create → action: → \*NS: → 91XX

For a subsection, execute: ..... create → text: → \*NS: → sub

For a paragraph, execute: ..... create → text: → \*NS: → par

For a subdivision, execute: ..... create → text: → \*NS: → subd

For a subdivision paragraph, execute: ..... create → text: → \*NS: → subpar

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#a)", etc., is filled in. Below, for the budget, fill in the 9100 department code; and fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

**SECTION #** [91] **Nonstatutory provisions:...**

(#1) CS RULES FOR FEE ASSESSMENT NO FP

Using the procedure under section 227.24 of the statutes, the department of health and family services shall promulgate the rules required under section 254.345 (1) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under section 254.345 (1) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public ~~fre 26/2/99 1999 nonstat (fr)~~ peace, health, safety or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

1999

INSERT 19-6

Nonstat File Sequence: **FFF**

LRB \_\_\_\_\_ / \_\_\_\_\_  
\_\_\_\_\_ : \_\_\_\_\_ : \_\_\_\_\_

**EFFECTIVE DATE**

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdate**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

**SECTION # \_\_\_\_\_ . Effective date.**

( #1 ) ( ) ..... This act takes effect  
on .....

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → \*NS: → **effdateE**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

**SECTION # \_\_\_\_\_ . Effective dates; .....**

..... This act takes effect on the day after publication, except as follows:  
( #1 ) ( ) ..... The treatment of  
sections .....  
of the statutes takes effect on .....

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → \*NS: → **94XX**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, for the budget, fill in the **9400** department code; and fill in "( )" only if a "frozen" number is needed.

**SECTION 94<sup>✓</sup> 2<sup>✓</sup> 3<sup>✓</sup> . Effective dates; <sup>ⓑ</sup> health and family services, .....**

.....  
( #1 ) <sup>Ⓢ</sup> LICENSING OF RADIOACTIVE <sup>Ⓢ</sup> MATERIAL. ..... The treatment of  
sections 254.365<sup>✓</sup> .....  
of the statutes takes effect on July 1, 2002<sup>✓</sup> .....

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

LRB-1164/2dn  
DAK:wlj&jlg:hmh

To Sue Jablonsky:

This Drafter's Note is keyed to the numbers of items of ~~LRB~~ LRB-1164/1dn, dated January 12, 1999, and to the DHFS response to those items:

1. c. I did not draft a definition of "forfeiture"; no specific definition of "forfeiture" exists in the statutes and it is unnecessary. In addition, I am concerned that a sole definition, drafted as requested, might be used by a court to apply to situations in which it might be inappropriate.

e. Please review the definition of "general license". Note that I have deleted language from s. 254.365 (1) (b) that, given the definition, is duplicative. Note further that I have in s. 254.365 (4) (b) required the department to promulgate rules prescribing the requirements for a general license.

h. Your comment about the definition of "radiation generating equipment" did not refer to the definition's second sentence. I left it in. Okay?

i. Please review my changed definition of "radioactive material".

3. a. I did not include "the Atomic Energy Act of 1954, as amended" in s. 254.335; the U. S. Code citation is fully sufficient to carry this meaning. I also did not use the language "by-product, source and special nuclear material", but, rather, used the full terms, as defined.

d. With respect to the third sentence and in answer to your question, the reference to regulations adopted under 42 USC 2071 to 2114 is analogous, under the federal Administrative Procedures Act, to your proposed material. With respect to the fourth sentence, although I have drafted it at your behest, the phrase "nationally recognized bodies in the field of radiation protection" has the same problems as the former proposed language; that is, it is vague and may result in an invalid delegation of state lawmaking power to these bodies, under article IV, section 1, of the Wisconsin Constitution.

4. Please review s. 254.345. I have drafted it separately from s. 254.365, because it has a different effective date and is sunsetted. I also have provided for emergency rule-making powers for s. 254.345, although not for s. 254.365, since the latter section takes effect within plenty of time for the department to promulgate rules under the authority of s. 227.11 (2) (d), stats. Please also see the delayed effective date for s.

Also, your language has the term "X-ray devices", which I have drafted. Does this term differ from the defined term "X-ray tube"? Should it be defined? If so, what is the definition?

under other statutes

LRB

254.365<sup>✓</sup>. In addition, I have revised s. 254.365 (7)<sup>✓</sup> as requested. However, the language is vague and may result in an invalid delegation of state lawmaking power to these bodies, under article IV, section 1, of the Wisconsin Constitution.

7. I have repealed the first sentence of s. 254.37 (4)<sup>✓</sup>, stats., to eliminate the conflict with s. 254.37 (2)<sup>✓</sup>, stats. I have retained the second sentence. A search of the statutes indicates that Dane county jurisdiction is specified 13 times; I believe that this specification is for the purpose of convenience for state agency authorities in enforcement.

9. The implications of adding reference to registrations under s. 254.35<sup>✓</sup>, stats., and licenses under s. 254.365 (1) (a) or (b) to ss. 49.857<sup>✓</sup>, 73.0301<sup>✓</sup> and 250.041<sup>✓</sup>, stats., are the following:

a. Under s. 254.35, stats., the person must provide his or her social security number as a condition of issuance or renewal of a license or registration.

b. Under s. 49.857, stats., the person holding such a registration or license who is delinquent in making court-ordered payments of child or family support or maintenance or other expenses may have the registration or license restricted, limited, suspended or withheld or may be denied or refused renewal of a registration or license.

c. Under s. 73.0301, stats., the person holding such a registration or license who is liable for delinquent taxes may have the same penalties imposed as are specified in b.

Receipt of certain federal moneys by the state is conditioned on the state's enforcement of the provisions under s. 49.857<sup>✓</sup>, stats.; however, after speaking with Pam Kahler, the drafter who coordinated the drafting of that statute, I'm not at all sure that it is appropriate to include reference to registrations or licenses affected by this draft. What is principally at issue is an *individual's* license, registration, etc., not that of a site or facility. So far as I can tell, the majority of licenses and registrations in this draft are the latter. Please let me know if you disagree or if I am in error.

Debora A. Kennedy  
Managing Attorney  
266-0137

takes effect within plenty of time for the department to promulgate rules under the authority of s. 227.11 (2) (d), stats. Please also see the delayed effective date for s. 254.365. In addition, I have revised s. 254.365 (7) as requested. However, the language is vague and may result in an invalid delegation of state lawmaking power to these bodies, under article IV, section 1, of the Wisconsin Constitution.

7. I have repealed the first sentence of s. 254.37 (4), stats., to eliminate the conflict with s. 254.37 (2), stats. I have retained the second sentence. A search of the statutes indicates that Dane County jurisdiction is specified 13 times; I believe that this specification is for the purpose of convenience for state agency authorities in enforcement.

9. The implications of adding reference to registrations under s. 254.35, stats., and licenses under s. 254.365 (1) (a) or (b) to ss. 49.857, 73.0301 and 250.041, stats., are the following:

a. Under s. 254.35, stats., the person must provide his or her social security number as a condition of issuance or renewal of a license or registration.

b. Under s. 49.857, stats., the person holding such a registration or license who is delinquent in making court-ordered payments of child or family support or maintenance or other expenses may have the registration or license restricted, limited, suspended or withheld or may be denied or refused renewal of a registration or license.

c. Under s. 73.0301, stats., the person holding such a registration or license who is liable for delinquent taxes may have the same penalties imposed as are specified in b.

Receipt of certain federal moneys by the state is conditioned on the state's enforcement of the provisions under s. 49.857, stats.; however, after speaking with Pam Kahler, the drafter who coordinated the drafting of that statute, I'm not at all sure that it is appropriate to include reference to registrations or licenses affected by this draft. What is principally at issue is an *individual's* license, registration, etc., not that of a site or facility. So far as I can tell, the majority of licenses and registrations in this draft are the latter. Please let me know if you disagree or if I am in error.

Debora A. Kennedy  
Managing Attorney  
266-0137

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

LRB-1164/2dn  
DAK:wlj&jlg:lp

January 21, 1999

To Sue Jablonsky:

This Drafter's Note is keyed to the numbers of items of LRB-1164/1dn, dated January 12, 1999, and to the DHFS response to those items:

1. c. I did not draft a definition of "forfeiture"; no specific definition of "forfeiture" exists in the statutes and it is unnecessary. In addition, I am concerned that a sole definition, drafted as requested, might be used by a court to apply to situations under other statutes in which it might be inappropriate.

e. Please review the definition of "general license". Note that I have deleted language from s. 254.365 (1) (b) that, given the definition, is duplicative. Note further that I have in s. 254.365 (4) (b) required the department to promulgate rules prescribing the requirements for a general license.

h. Your comment about the definition of "radiation generating equipment" did not refer to the definition's second sentence. I left it in. Okay?

i. Please review my changed definition of "radioactive material".

3. a. I did not include "the Atomic Energy Act of 1954, as amended" in s. 254.335; the U. S. Code citation is fully sufficient to carry this meaning. I also did not use the language "by-product, source and special nuclear material", but, rather, used the full terms, as defined.

d. With respect to the third sentence and in answer to your question, the reference to regulations adopted under 42 USC 2071 to 2114 is analogous, under the federal Administrative Procedures Act, to your proposed material. With respect to the fourth sentence, although I have drafted it at your behest, the phrase "nationally recognized bodies in the field of radiation protection" has the same problems as the former proposed language; that is, it is vague and may result in an invalid delegation of state lawmaking power to these bodies, under article IV, section 1, of the Wisconsin Constitution. Also, your language has the term "X-ray devices", which I have drafted. Does this term differ from the defined term "X-ray tube"? Should it be defined? If so, what is the definition?

4. Please review s. 254.345. I have drafted it separately from s. 254.365, because it has a different effective date and is sunsetted. I also have provided for emergency rule-making powers for s. 254.345, although not for s. 254.365, since the latter section



## Kennedy, Debora

---

**From:** Jablonsky, Sue  
**Sent:** Friday, January 22, 1999 5:09 PM  
**To:** Kennedy, Debora  
**Subject:** FW: Final responses to Radiation monitoring (agreement state) s

-----Original Message-----

**From:** Chao, Richard  
**Sent:** Friday, January 22, 1999 4:35 PM  
**To:** Jablonsky, Sue  
**Subject:** Final responses to Radiation monitoring (agreement state) s

Hey Sue:  
It was good to see you today.  
Let's hope this is the last set of responses for the Radiation Monitoring stat  
language. Thanks for allowing us to respond. Have a good weekend, Rich

Richard T. Chao  
Budget Section  
Department of Health and Family Services  
(608) 267-0356



254response2\_2.doc

**Response to Legislative Reference Bureau comments dated 1/21/99**  
**WI Stats 254.31 - .45**

- ✓ 1.c. Agree. Point well taken.  
✓ e. Agree, providing that this does not imply that only current licensees can possess a generally-licensed device. This is not the case. We recommend that the phrase 'by a licensee' be replaced with 'by a person' or something equivalent.  
**Note:** Any person or entity can purchase and possess a generally-licensed device whether or not they possess a specific license. However, once it is in their possession, they must conform to possession and disposal requirements established in rule.
- ✓ h. Agree.  
✓ i. Agree. Looks good.
- ✓ 3.a. Agree. **Note:** I recently saw U.S. Nuclear Regulatory Commission documents that referenced the Atomic Energy Act of 1954 as 42 USC 2017 to 2114. This reference may be a transcription error, but I thought it worth mentioning.
- ✓ d. Please remove the fourth sentence of 254.34 (1) (a). This sentence is redundant to sentence 2.
- ✓ Also, please revise 254.31 (12) to read: 'X-ray tube means any electron tube, contained in a device, which is specifically designed for the conversion of electrical energy into X-ray energy.'
4. ✓ Please revise 254.345 (2) to read: This section does not apply after December 31, 2002. **Note:** This is a more realistic date.
- ✓ Question: Since emergency rules have a maximum lifetime of 270 days, can we draft one emergency rule that allows assessment of the license surcharge fee each year until the agreement is signed (by December 31, 2002)? If not, can we promulgate an emergency rule each year for two consecutive years that allows the fee collection specified in 254.345, if necessary? This latter scenario assumes that the permanent rules may not be finalized by January 1, 2001.
- ✓ The delayed effective date for 254.365 should be changed to January 1, 2003 in the non-statutory provisions.
- ✓ Please revise 254.365 (7) to read: EXEMPTION. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard. **Note:** The remainder of this sentence, as originally proposed, is problematic and can be removed with no negative impact.
- ✓ 7. Agree.
- ✓ 9. Registration of x-ray devices and state-regulated radioactive materials is currently exempt from the requirements of the referenced statutes because registrations are issued to a corporate entity and not an individual. We do not request social security numbers or FEIN's on registration applications.

---

We agree with your interpretation that licenses will be issued primarily to sites or facilities.

OTHER

- ✓ 1. Please revise 254.35 (4) to read: **EXEMPTIONS:** After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard. **Note:** The remainder of this sentence has been deleted as unnecessary.
  
- ✓ 2. Please revise the statutory analysis to reflect changes in the body of the statute. Also, there is continued confusion regarding general and specific licenses. Paragraph 3, sentence 1 of the analysis would be more correct by stating: The bill establishes authority, as of January 1, 2003, for DHFS to license specifically the possession, use, manufacture, production, transfer or acquisition of radioactive material or devices or items that use radioactive material and to operate a site that uses radioactive material; and to establish general license requirements for the possession, use, transfer or acquisition of by-product radioactive material or devices or items containing by-product radioactive material.
  
- ✗ 3. Information for the fiscal analysis: The proposed license surcharge fee will temporarily increase fees to NRC licensees in Wisconsin by no more than 36% for a three year period. Surcharge fee revenue is needed to fund development of a state licensing program that meets NRC requirements. After the agreement is signed between the state and the NRC that transfers regulatory authority over specific radioactive materials to the state, state license fees will replace NRC fees. The surcharge fee ends. State license fees will be at least 36% lower than equivalent NRC fees.

SOON - In edit 1/23

1999 - 2000 LEGISLATURE

LRB-1164/3

DAK:wlj&jlg:lp

D-NOTE

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

1 AN ACT ...; 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-ray devices may not be

✓  
for by-product, source and special nuclear radioactive material

radioactive material or

January 1, 2003

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

The bill establishes authority, as of ~~July 1, 2002~~ January 1, 2003, for DHFS to license generally the possession, use, transfer or acquisition of radioactive by-product material and to license specifically the possession, use, manufacture, production, transfer or acquisition 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 specific licenses and for requirements for general 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.

The bill authorizes DHFS annually, until ~~July 1, 2002~~ January 1, 2003, to assess a fee, prescribed by DHFS by rule, to any person in this state holding a specific license issued by the U.S. nuclear regulatory commission. The bill requires DHFS to promulgate rules establishing the fee on an emergency basis and exempts DHFS from making a finding of emergency for the rules.

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

INSERT  
A

specific

January 1, 2003

the amount of which is

amount

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

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.

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 **SECTION 3.** 254.31 (1) (b) of the statutes is created to read:

4 254.31 (1) (b) The tailings or waste produced by the extraction or concentration  
5 of uranium or thorium from any ore processed primarily for its source material  
6 content.

7 **SECTION 4.** 254.31 (2) of the statutes is created to read:

8 254.31 (2) “Decommissioning” means conducting final operational activities at  
9 a nuclear facility to dismantle site structures, to decontaminate site surfaces and  
10 remaining structures, to stabilize and contain residual radioactive material and to  
11 carry out any other activities necessary to prepare the site for postoperational care.

12 **SECTION 5.** 254.31 (2m) of the statutes is created to read:

13 254.31 (2m) “General license” means a license, under requirements prescribed  
14 by the department by rule, to possess, use, transfer or acquire by-product material  
15 or devices or equipment utilizing by-product material without the filing of a license  
16 application by a ~~licensee~~ <sup>person</sup> or issuance of licensing confirmation by the department.

17 **SECTION 6.** 254.31 (3) of the statutes is renumbered 254.31 (1) (intro.) and  
18 amended to read:

19 254.31 (1) (intro.) “By-product material” means any radioactive of the  
20 following:

21 (a) Radioactive material (,except special nuclear material), yielded in or made  
22 radioactive by exposure to the radiation incident to the process of producing or  
23 utilizing special nuclear material.

24 **SECTION 7.** 254.31 (1) (b) of the statutes is created to read:

25 **SECTION 8.** 254.31 (3g) of the statutes is repealed and recreated to read:

1           254.31 (3g) "Ionizing radiation" means all radiations capable of producing ions  
2 directly or indirectly in their passage through matter, including all of the following:

3           (a) Electromagnetic radiations, including X-rays and gamma rays.

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

6           **SECTION 9.** 254.31 (5) of the statutes is created to read:

7           254.31 (5) "Radiation generating equipment" means a system, manufactured  
8 product or device or component part of such a product or device that, during  
9 operation, is capable of generating or emitting ionizing radiation without the use of  
10 radioactive material. "Radiation generating equipment" does not include a device  
11 that emits nonionizing radiation.

12           **SECTION 10.** 254.31 (6) of the statutes is amended to read:

13           254.31 (6) "Radiation installation" is any location or facility where radiation  
14 ~~machines are generating equipment is~~ used or where radioactive material is  
15 produced, transported, stored, disposed of or used for any purpose.

16           **SECTION 11.** 254.31 (7) of the statutes is repealed.

17           **SECTION 12.** 254.31 (8) of the statutes is renumbered 254.31 (9m) and amended  
18 to read:

19           254.31 (9m) "Radioactive material" includes any solid, liquid or gaseous  
20 substance which emits ionizing radiation spontaneously, including  
21 accelerator-produced material, by-product material, naturally occurring material,  
22 source material and special nuclear material.

23           **SECTION 13.** 254.31 (9) of the statutes is amended to read:

24           254.31 (9) "Radiation source" means a radiation ~~machine~~ generating  
25 equipment or radioactive material ~~as defined herein.~~

1           **SECTION 14.** 254.31 (11g) of the statutes is created to read:

2           254.31 (11g) “Specific license” means a license, under requirements prescribed  
3 by the department by rule, to possess, use, manufacture, produce, transfer or acquire  
4 radioactive material or devices or equipment utilizing radioactive material.

5           **SECTION 15.** 254.31 (11m) of the statutes is created to read:

6           254.31 (11m) “Transuranic” means a radioactive material having an atomic  
7 number that is greater than 92.

*that is contained in a device  
and that*

8           **SECTION 16.** 254.31 (12) of the statutes is amended to read:

9           254.31 (12) “X-ray tube” means any electron tube which is specifically  
10 designed for the conversion of electrical energy into X-ray energy.

11           **SECTION 17.** 254.33 of the statutes is amended to read:

12           **254.33 Public policy.** Since radiations and their sources can be instrumental  
13 in the improvement of the health and welfare of the public if properly utilized, and  
14 may be destructive or detrimental to life or health if carelessly or excessively  
15 employed or may detrimentally affect the environment of the state if improperly  
16 utilized, it is hereby declared to be the public policy of this state to encourage the  
17 constructive uses of radiation and to prohibit and prevent exposure to radiation in  
18 amounts which are or may be detrimental to health. It is further the policy for the  
19 department to advise, consult and cooperate with ~~the department of commerce and~~  
20 other agencies of the state, the federal government, other states and interstate  
21 agencies and with affected groups, political subdivisions and industries; and, in  
22 general, to conform as nearly as possible to nationally accepted standards in the  
23 promulgation and enforcement of rules.

24           **SECTION 18.** 254.335 of the statutes is created to read:



1           **254.335 Agreements with the U.S. nuclear regulatory commission**  
2 **transition.** (1) The governor may, on behalf of the state, enter into agreements with  
3 the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to  
4 discontinue certain federal licensing and related regulatory authority with respect  
5 to by-product material, source material and special nuclear material and to assume  
6 state regulatory authority.

7           (2) Any person who, on the effective date of an agreement specified under sub.  
8 (1), possesses a license issued by the U.S. nuclear regulatory commission that is  
9 subject to the agreement is considered to possess a specific license issued under s.  
10 254.365 (1) (a) or to fulfill requirements specified for a general license under s.  
11 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the  
12 person from the department of a notice of expiration of the license or on the date of  
13 expiration that was specified in the license issued by the U.S. nuclear regulatory  
14 commission, whichever is earlier.

15           **SECTION 19.** 254.34 (1) (intro.) of the statutes is amended to read:

16           254.34 (1) (intro.) ~~The department and the department of commerce is the state~~  
17 radiation control agency and shall do all of the following:

18           **SECTION 20.** 254.34 (1) (a) of the statutes is amended to read:

19           254.34 (1) (a) ~~Formulate, adopt and enforce, amend and repeal~~ Promulgate and  
20 enforce rules, including registration and licensing of sources of ionizing radiation, as  
21 may be necessary to prohibit and prevent unnecessary radiation. ~~Such exposure.~~  
22 The rules may incorporate by reference the recommended standards of nationally  
23 recognized bodies in the field of radiation protection and other fields of atomic energy,  
24 under the procedure established by s. 227.21 (2). ~~The rules for by-product material,~~  
25 source material and special nuclear material may be no less stringent than the

1 requirements under 42 USC ~~2071~~<sup>2011</sup> to 2114 and regulations adopted under 42 USC  
 2 ~~2071~~ to 2114. Rules for naturally occurring and accelerator-produced radioactive  
 3 materials and for X-ray devices may be no less stringent than the most recent  
 4 standards and guidelines of nationally recognized bodies in the field of radiation  
 5 protection.

6 SECTION 21. 254.34 (1) (c) of the statutes is renumbered 254.34 (1) (c) (intro.)  
7 and amended to read:

8 254.34 (1) (c) (intro.) Develop comprehensive policies and programs for the  
9 evaluation and, determination and reduction of hazards associated with the use of  
10 radiation, ~~and for their amelioration.~~ that are compatible with requirements of the  
11 U.S. nuclear regulatory commission for the regulation of by-product material,  
12 source material and special nuclear material. The department shall maintain all of  
13 the following records:

14 SECTION 22. 254.34 (1) (c) 1. of the statutes is created to read:

15 254.34 (1) (c) 1. Files of all license applications, issuances, denials, transfers,  
16 renewals, modifications, suspensions and revocations under s. 254.365.

17 SECTION 23. 254.34 (1) (c) 2. of the statutes is created to read:

18 254.34 (1) (c) 2. Files of all registrants under s. 254.35 and any related  
19 administrative or judicial action.

20 SECTION 24. 254.34 (2) (intro.) of the statutes is amended to read:

21 254.34 (2) (intro.) The department, ~~servng as the lead agency, and the~~  
22 ~~department of commerce~~ may:

23 SECTION 25. 254.34 (4) of the statutes is renumbered 254.34 (1) (h) 5.

24 SECTION 26. 254.345 of the statutes is created to read:

1           **254.345 Assessment of Fee.** (1) The department may annually assess a fee,  
2 the amount of which is prescribed by the department by rule, to any specific licensee  
3 of the U.S. nuclear regulatory commission in this state. The fee amounts shall be  
4 used by the department for the department's activities under this subchapter.

5           (2) This section does not apply after ~~June 30~~, 2002.

December 31 ✓

6           **SECTION 27.** 254.35 (1) of the statutes is amended to read:

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

1 ~~a copy of each amended and new registration.~~ Persons engaged in manufacturing,  
2 demonstration, sale, testing or repair of radiation sources ~~shall not be~~ are not  
3 required to list such sources on the registration form.

4 **SECTION 28.** 254.35 (2) of the statutes is amended to read:

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

17 **SECTION 29.** 254.35 (3) (title) of the statutes is amended to read:

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

19 **SECTION 30.** 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)~~ (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  
24 to expiration of the registration. No additional fee may be required for recording  
25 changes in the registration information.

1           **SECTION 31.** 254.35 (3) (b) of the statutes is amended to read:

2           254.35 (3) (b) For a ~~medical~~ site having an ionizing radiation installation  
3           serving physicians and clinics, osteopaths and clinics, ~~and chiropractors or hospitals~~  
4           that possesses radioactive materials in any quantity, the fee shall be at least \$25 \$36  
5           for each site and at least ~~\$30~~ \$44 for each X-ray tube.

6           **SECTION 32.** 254.35 (3) (c) of the statutes is amended to read:

7           254.35 (3) (c) For a ~~chiropractic~~, podiatric or veterinary site having an ionizing  
8           radiation installation, the fee shall be at least \$25 \$36 for each site and at least \$30  
9           \$44 for each X-ray tube.

10          **SECTION 33.** 254.35 (3) (d) of the statutes is amended to read:

11          254.35 (3) (d) For a dental site having an ionizing radiation installation, the  
12          fee shall be at least \$25 \$36 for each site and at least ~~\$20~~ \$30 for each X-ray tube.

13          **SECTION 34.** 254.35 (3) (f) of the statutes is amended to read:

14          254.35 (3) (f) For an industrial, school, research project or other site having an  
15          ionizing radiation installation ~~and radioactive materials in any quantity~~, the fee  
16          shall be at least \$25 \$36 for each site and at least ~~\$30~~ \$44 for each X-ray tube.

17          **SECTION 35.** 254.35 (3) (fm) of the statutes is created to read:

18          254.35 (3) (fm) For any site that has generally licensed devices that are not  
19          exempted by the department, the fee shall be at least \$100 for each site and at least  
20          \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq  
21          or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi  
22          of a transuranic.

23          **SECTION 36.** 254.35 (3) (g) of the statutes is amended to read:

24          254.35 (3) (g) The fees under this subsection shall be as stated unless the  
25          department promulgates rules to increase the annual registration fee ~~after January~~

1 1, 1986, for a site having an ionizing radiation installation or, for an X-ray tube or  
2 for generally licensed devices that are not exempted by the department.

3 SECTION 37. 254.35 (4) of the statutes is amended to read:

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

14 SECTION 38. 254.36 of the statutes is renumbered 254.34 (1) (am) and amended  
15 to read:

16 254.34 (1) (am) ~~Radiation protection.~~ ~~The department shall promulgate a~~  
17 ~~radiation protection code. Other departments and agencies of state government and~~  
18 A rule identical to a rule specified under par. (a) may be promulgated by a state  
19 agency other than the department and an ordinance identical to a rule specified  
20 under par. (a) may be enacted by a local governmental units may adopt the identical  
21 code unit, but no other rule, code or ordinance relating to this subject may be  
22 promulgated or enacted may be promulgated or ordinance may be enacted that  
23 differs from a rule under par. (a) and relates to the same subject area except as  
24 provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

25 SECTION 39. 254.365 of the statutes is created to read:

1           **254.365 Licensing of radioactive material. (1) LICENSE REQUIRED.** No  
2 person may possess, use, manufacture, transport, store, transfer or dispose of  
3 radioactive material or a device or item of equipment that uses radioactive material  
4 or may operate a site that uses radioactive material that is not under the authority  
5 of the U.S. nuclear regulatory commission unless one of the following applies:

6           (a) The person has a specific license issued by the department.

7           (b) The person meets general license requirements.

8           (c) The person possesses a license issued by another state or by the U.S. nuclear  
9 regulatory commission that is reciprocally recognized by the department.

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

11          **(2) APPLICATION.** Application for a license under sub. (1) (a) or for reciprocal  
12 recognition under sub. (1) (c) shall be made on forms provided by the department.

13          **(3) MODIFICATION OR TERMINATION OF LICENSE.** Within 30 days after any change  
14 to the information on a license issued under this section, the licensee shall inform the  
15 department of the change and the department shall record the changed information.  
16 Within 30 days after termination of an activity licensed under this section, the person  
17 in control of the activity shall notify the department. The department may require  
18 that the person in control submit to the department for approval a plan for  
19 decommissioning the activity.

20          **(4) RULES.** The department shall promulgate rules for all of the following:

21           (a) The issuance, modification, suspension, termination and revocation of  
22 specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

23           (b) The requirements for a general license under sub. (1) (b).

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

- 1           1. Issuance of an initial or renewal specific license under sub. (1) (a).
- 2           2. Issuance of a license amendment.
- 3           3. Termination of a license.
- 4           4. Issuance of reciprocal recognition of a license for radioactive materials of
- 5 another state or the U.S. nuclear regulatory commission.

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

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

14           **(7) EXEMPTION.** The department may exempt from licensing requirements of  
15 this section radioactive material that the department finds is without undue  
16 radiation hazard ~~according to the most recent standards and guidelines of~~  
17 ~~nationally recognized bodies in the field of radiation protection.~~

18           **SECTION 40.** 254.37 (1) of the statutes is renumbered 254.37 (1) (intro.) and  
19 amended to read:

20           254.37 (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. (intro.)  
21 Whenever the department ~~or the department of commerce~~ finds, upon inspection and  
22 examination, that a source of radiation as constructed, operated or maintained  
23 results in a violation of this subchapter or of any rules promulgated under this  
24 subchapter, ~~it the department shall notify~~ do all of the following:



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

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

7           **SECTION 41.** 254.37 (2) of the statutes is amended to read:

8           254.37 (2) ORDERS. The department ~~or the department of commerce~~ shall issue  
9 and enforce such orders or modifications of previously issued orders as may be  
10 required in connection with proceedings under this subchapter. The orders shall be  
11 subject to review by the department upon petition of the persons affected. Whenever  
12 the department ~~or the department of commerce~~ finds that a condition exists ~~which~~  
13 that constitutes an immediate threat to health due to violation of this subchapter or  
14 any rule or order promulgated under this subchapter, it may issue an order reciting  
15 the existence of the threat and the findings pertaining to the threat. The department  
16 ~~or the department of commerce~~ may summarily cause the abatement of the violation.

17           **SECTION 42.** 254.37 (3) of the statutes is amended to read:

18           254.37 (3) RULES. The department shall promulgate and enforce the rules  
19 pertaining to ionizing radiation ~~in establishments principally engaged in furnishing~~  
20 ~~medical, surgical, chiropractic and other health services to persons and animals.~~ The  
21 ~~department of commerce shall enforce the rules pertaining to ionizing radiation in~~  
22 ~~industrial establishments.~~ The department shall notify the department of commerce  
23 ~~and deliver to it a copy of each new registration and at such time a decision shall be~~  
24 ~~made as to which state agency shall enforce the rules pertaining to ionizing~~  
25 radiation.

1           **SECTION 43.** 254.37 (4) of the statutes is amended to read:

2           254.37 (4) ~~ENFORCEMENT JURISDICTION. All orders issued under this subchapter~~  
3           ~~shall be enforced by the attorney general.~~ The circuit court of Dane county shall have  
4           jurisdiction to enforce the orders by injunctive and other appropriate relief.

5           **SECTION 44.** 254.38 (title) of the statutes is created to read:

6           **254.38 (title) Emergency authority.**

7           **SECTION 45.** 254.38 of the statutes is renumbered 254.38 (1) and amended to  
8           read:

9           254.38 (1) **IMPOUNDING MATERIALS.** The department ~~or department of commerce~~  
10           may impound or order the sequestration of sources of radiation in the possession of  
11           any person who is not equipped to observe or who fails to observe safety standards  
12           to protect health that are established in rules promulgated by the department ~~or the~~  
13           ~~department of commerce.~~

14           **SECTION 46.** 254.38 (2) of the statutes is created to read:

15           254.38 (2) **EMERGENCY ORDERS.** If the department finds that an emergency  
16           exists concerning a matter subject to regulation under this subchapter that requires  
17           immediate action to protect the public health or safety, the department may issue an  
18           emergency order without notice or hearing that recites the existence of the  
19           emergency and requires such action as is necessary to mitigate the emergency. Any  
20           person to whom the order is issued shall immediately comply with the order. A  
21           person to whom an emergency order is issued shall be afforded a hearing within 30  
22           days after receipt by the department of a written request for the hearing. An  
23           emergency order is effective upon issuance and remains in effect for up to 90 days  
24           after issuance, except that the order may be revoked or modified based on the results  
25           of the hearing.

1           **SECTION 47.** 254.39 (2) of the statutes is amended to read:

2           254.39 (2) This subchapter does not apply to on-site activities of any nuclear  
3 reactor plant licensed by the ~~nuclear regulatory commission~~ U.S. nuclear regulatory  
4 commission.

5           **SECTION 48.** 254.45 of the statutes is repealed and recreated to read:

6           **254.45 Penalties.** (1) **GENERAL.** (a) Any person who violates this subchapter  
7 or a rule promulgated under this subchapter or a condition of a license or registration  
8 issued by the department under this subchapter may be required to forfeit not less  
9 than \$100 nor more than \$100,000. Each day of continued violation constitutes a  
10 separate offense.

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

13           1. The wilfulness of the violation.

14           2. The person's previous violations, if any, of this subchapter, rules  
15 promulgated under this subchapter or conditions of a license or registration issued  
16 by the department under this subchapter.

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

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

20           **(2) ASSESSMENT OF FORFEITURES; NOTICE.** The department may directly assess  
21 forfeitures provided for in sub. (1). If the department determines that a forfeiture  
22 should be assessed for a particular violation, the department shall send a notice of  
23 assessment to the person. The notice shall specify the amount of the forfeiture  
24 assessed and the violation and the statute or rule alleged to have been violated and  
25 shall inform the person of the right to hearing under sub. (3).

1           **(3) HEARING.** A person upon whom a forfeiture is imposed may contest the  
2 action by sending, within 10 days after receipt of notice of a contested action, a  
3 written request for hearing under s. 227.44 to the division of hearings and appeals  
4 created under s. 15.103 (1). The administrator of the division may designate a  
5 hearing examiner to preside over the case and recommend a decision to the  
6 administrator under s. 227.46. The decision of the administrator of the division shall  
7 be the final administrative decision. The division shall commence the hearing within  
8 30 days of receipt of the request for hearing and shall issue a final decision within  
9 15 days after the close of the hearing. Proceedings before the division are governed  
10 by ch. 227.

11           **(4) FORFEITURE PAYMENT AND DISPOSITION.** (a) A person against whom the  
12 department has assessed a forfeiture shall pay the forfeiture to the department  
13 within 10 days after receipt of the notice under sub. (2) or, if the person contests the  
14 assessment, within 10 days after receipt of the final decision after exhaustion of  
15 administrative review. If the person petitions for judicial review under ch. 227, the  
16 person shall pay the forfeiture within 10 days after receipt of the final judicial  
17 decision.

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

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

24           **SECTION 49.** 281.01 (15) of the statutes is amended to read:

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

11           **SECTION 50.** 285.01 (40) of the statutes is amended to read:

12           285.01 (40) “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           **SECTION 51.** 289.01 (33) of the statutes is amended to read:

23           289.01 (33) “Solid waste” means any garbage, refuse, sludge from a waste  
24 treatment plant, water supply treatment plant or air pollution control facility and  
25 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).

8 **SECTION 52.** 295.11 (10) of the statutes is amended to read:

9 295.11 (10) “Solid waste” means any garbage, refuse, sludge from a waste  
10 treatment plant, water supply treatment plant or air pollution control facility and  
11 other discarded or salvageable materials, including solid, liquid, semisolid, or  
12 contained gaseous materials resulting from industrial, commercial, mining and  
13 agricultural operations, and from community activities, but does not include solids  
14 or dissolved material in domestic sewage, or solid or dissolved materials in irrigation  
15 return flows or industrial discharges which are point sources subject to permits  
16 under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear  
17 material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31  
18 ~~(3)~~ (1).

19 **SECTION 9123. Nonstatutory provisions; health and family services.**

20 (1) RULES FOR FEE ASSESSMENT. Using the procedure under section 227.24 of the  
21 statutes, the department of health and family services shall promulgate the rules  
22 required under section 254.345 (1) of the statutes, as created by this act, for the  
23 period before the effective date of the permanent rules promulgated under section  
24 254.345 (1) of the statutes, as created by this act, but not to exceed the period  
25 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding

1 section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department is not required  
2 to provide evidence that promulgating a rule under this subsection as an emergency  
3 rule is necessary for the preservation of the public peace, health, safety or welfare  
4 and is not required to provide a finding of emergency for a rule promulgated under  
5 this subsection.

6 **SECTION 9323. Initial applicability; health and family services.**

7 (1) TRANSFER OF RADIATION INSTALLATION. The treatment of section 254.35 (2) of  
8 the statutes first applies to transfers of radiation installations that are made 16 days  
9 after the effective date of this subsection.

10 (2) FORFEITURES FOR RADIATION VIOLATIONS. The treatment of section 254.45 of  
11 the statutes first applies to violations committed on the effective date of this  
12 subsection.

13 **SECTION 9423. Effective dates; health and family services.**

14 (1) LICENSING OF RADIOACTIVE MATERIAL. The treatment of section 254.365 of the  
15 statutes takes effect on ~~July 1, 2002~~.

16 (END)

January 1, 2003 ✓

D-NOTE

no # establish general license requirements for the possession, use, transfer or acquisition of by-product radioactive material or devices or items that contain by-product radioactive material. In addition, DHS is authorized to

End of WSA



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

LRB-1164/3dn  
DAK:wlj&jlg:lp

To Sue Jablonsky:

1. The citation to the U. S. Code in s. 254.34 (1) (a) ✓ was indeed an error; I have corrected it.

2. With respect to emergency rules questions:

a. The "life" of emergency rules is 270 ✓ days, so that, even if an emergency rule is written to include an extended period, the rule would be ineffective past the 270 days. Emergency rules can be promulgated at any time, under authority to promulgate permanent rules, as long as DHFS makes findings of necessity and emergency; all that the nonstatutory provision in this bill does is to lift the findings requirements (and to require emergency rules promulgation).

b. The questions seem to be phrased as if the emergency rules authorize the assessment of the fee, but that is not correct; the emergency rules merely authorize DHFS to prescribe the fee *amount* by emergency rule, prior to authorizing the amount in permanent rules. The authorization to assess is in s. 254.345 (1) and continues until January 1, 2003. Material supplementary to this request that was submitted earlier in the drafting process indicates that DHFS' intent is "to assess an additional state surcharge of 36% of each existing NRC annual license fee". That being the case, I would think that this language could be included in s. 254.345 (1) and that the necessity for any rulemaking, whether emergency or permanent, would be obviated. Is this solution realistic for you? If not, and if you must have continuing emergency rule authority, it is, of course, possible to notwithstanding the period authorized under s. 227.24 (1) (c) and (2), stats., but the rules begin to look like permanent rules in disguise and may be viewed as such by the legislature.

Debora A. Kennedy  
Managing Attorney  
266-0137

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

LRB-1164/3dn  
DAK:wj&jlg:hmh

Sunday, January 24, 1999

To Sue Jablonsky:

1. The citation to the U. S. Code in s. 254.34 (1) (a) was indeed an error; I have corrected it.

2. With respect to emergency rules questions:

a. The "life" of emergency rules is 270 days, so that, even if an emergency rule is written to include an extended period, the rule would be ineffective past the 270 days. Emergency rules can be promulgated at any time, under authority to promulgate permanent rules, as long as DHFS makes findings of necessity and emergency; all that the nonstatutory provision in this bill does is to lift the findings requirements (and to require emergency rules promulgation).

b. The questions seem to be phrased as if the emergency rules authorize the assessment of the fee, but that is not correct; the emergency rules merely authorize DHFS to prescribe the fee *amount* by emergency rule, prior to authorizing the amount in permanent rules. The authorization to assess is in s. 254.345 (1) and continues until January 1, 2003. Material supplementary to this request that was submitted earlier in the drafting process indicates that DHFS' intent is "to assess an additional state surcharge of 36% of each existing NRC annual license fee". That being the case, I would think that this language could be included in s. 254.345 (1) and that the necessity for any rule making, whether emergency or permanent, would be obviated. Is this solution realistic for you? If not, and if you must have continuing emergency rule authority, it is, of course, possible to notwithstanding the period authorized under s. 227.24 (1) (c) and (2), stats., but the rules begin to look like permanent rules in disguise and may be viewed as such by the legislature.

Debora A. Kennedy  
Managing Attorney  
266-0137

## Kennedy, Debora

---

**From:** Jablonsky, Sue  
**Sent:** Tuesday, January 26, 1999 2:13 PM  
**To:** Kennedy, Debora  
**Subject:** FW: Agreement State (Rad monitoring) stat language

-----Original Message-----

**From:** Chao, Richard  
**Sent:** Tuesday, January 26, 1999 1:05 PM  
**To:** Jablonsky, Sue  
**Subject:** Agreement State (Rad monitoring) stat language

Sue:  
Attached is what I think is the last comment for the agreement state stat language. This last part is short. The department and LRB has worked well together on this piece. Thanks for letting us squeeze this in. Rich

Richard T. Chao  
Budget Section  
Department of Health and Family Services  
(608) 267-0356



254response3\_1.doc

**Response to Legislative Reference Bureau comments dated 1/24/99**

- ✓ 2b. We concur with your recommendation to include the 36% surcharge fee amount in the statute. It is important that the statutory language also provide the authority to modify the fee amount by rule, if necessary. Please revise 254.345 (1) as follows: The department may annually assess a fee of 36% of each current NRC license application or materials license annual fee to any licensee of the U.S. nuclear regulatory commission in this state. The fee amounts shall be used by the department for the department's activities under this subchapter. The department may change the fee by rule. ?

**OTHER**

- ✓ 1. Please revise 254.365 (5) (a) as follows: (a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:
1. Issuance of an initial specific license under sub. (1) (a).
  2. Annual license maintenance.
  3. Issuance of a license amendment.
  4. Termination of a license.
  5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

**Note:** This revision reflects a recent change in the NRC fee structure.

2. Please revise the statutory analysis to reflect the changes in the body of the statute.

## Kennedy, Debora

---

**From:** Jablonsky, Sue  
**Sent:** Wednesday, January 27, 1999 4:15 PM  
**To:** Kennedy, Debora  
**Subject:** FW: NRC

-----Original Message-----

**From:** Chao, Richard  
**Sent:** Wednesday, January 27, 1999 1:27 PM  
**To:** Jablonsky, Sue  
**Subject:** Re: NRC

In response to LRB's question:

The NRC charges a variety of license related fees. They charge one fee for the application and issuance of a new license (called the application fee). They charge a subsequent fee every year on the anniversary date of a license to maintain the license in force (called the materials license annual fee). They also charge license amendment and other miscellaneous fees.

Point 2b, lines 4 and 5 of our response to the 1/24/99 letter will allow the state to assess a 36% surcharge fee only on the NRC application fee paid by a facility for a new license, or the NRC annual fee paid by a facility to maintain an existing license in force, whichever has been paid by that licensee in a particular year. Using this method, the state surcharge fee can appropriately be assessed to both new and longstanding NRC licensees.

Richard T. Chao  
Budget Section  
Department of Health and Family Services  
(608) 267-0356

>>> Sue Jablonsky 01/27 11:03 AM >>>

DAK's question pertains to the 1/24/99 response point 2b 4th and 5th lines. The question is whether there is an NRC license application fee and a fee to issue the license or are they one and the same (i.e. one fee for the application and issuance of a license)