

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 381

AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 10-19-3-3, AS AMENDED BY P.L.187-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. The executive director shall do the following:

- (1) Serve as the chief executive and administrative officer of the department.
- (2) Serve as the director of the council.
- (3) Administer the application for, and disbursement of, federal and state homeland security money for all Indiana state and local governments.
- (4) Develop a single strategic plan for preparing and responding to homeland security emergencies in consultation with the council.
- (5) Serve as the state coordinating officer under federal law for all matters relating to emergency and disaster mitigation, preparedness, response, and recovery.
- (6) Use and allocate the services, facilities, equipment, personnel, and resources of any state agency, on the governor's behalf, as is reasonably necessary in the preparation for, response to, or recovery from an emergency or disaster situation that threatens or has occurred in Indiana.
- (7) Develop a plan to protect key state assets and public infrastructure from a disaster or terrorist attack.

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(8) Partner with state agencies, including the state department of health and state educational institutions, to develop public safety education and outreach programs.

(9) Appoint an individual to serve as the state emergency medical services medical director as provided in section 3.5 of this chapter.

(10) Carry out the provisions of IC 10-19-12.

SECTION 2. IC 10-19-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 12. Nuclear Regulatory Agreement

Sec. 1. This agreement shall be effective immediately upon:

- (1) approval by the U.S. Nuclear Regulatory Commission; and**
- (2) signing by the governor and the chairman of the U.S. Nuclear Regulatory Commission.**

Sec. 2. It is the policy of the state in furtherance of its responsibility to protect the occupational health and safety, public health and safety, and environment to:

- (1) institute and maintain a regulatory program for sources of ionizing radiation and nonionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the federal government, an integrated effective system of regulation within the state, and a system consonant insofar as possible with those of other states;**
- (2) institute and maintain a program to permit development and use of sources of radiation for peaceful purposes consistent with the health and safety of the public; and**
- (3) provide for the availability of capacity either within or outside Indiana for the disposal of low-level radioactive waste generated within Indiana except for waste generated as a result of defense or federal research and development activities and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.**

Sec. 3. It is the purpose of this chapter to provide:

- (1) a program of effective regulation of sources of radiation for the protection of the occupational health and safety and public health and safety;**
- (2) a program to promote an orderly regulatory pattern within Indiana, among the states, and between the federal government and Indiana, and facilitate intergovernmental cooperation with respect to use and regulation of sources of**



radiation to the end that duplication of regulation may be minimized;

(3) a program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and

(4) a program to permit use of sources of radiation consistent with the health and safety of the public.

Sec. 4. As used in this chapter:

(1) "Byproduct material" means:

(A) 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;

(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;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;

(D) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(E) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity, if the governor, after determination by the NRC, declares by order that the source would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety.

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

(3) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of a licensed operation.



- (4) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.
- (5) "Department" means the Indiana department of homeland security established by IC 10-19-2-1.
- (6) "Disposal of low-level radioactive waste" means the isolation of such waste from the biosphere by emplacement in a land burial facility.
- (7) "General license" means a license effective under regulations promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.
- (8) "High-level radioactive waste" means:
- (A) irradiated reactor fuel;
 - (B) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and
 - (C) solids into which such liquid wastes have been converted.
- (9) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
- (10) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.
- (11) "Nonionizing radiation" means the following:
- (A) Any electromagnetic radiation, other than ionizing electromagnetic radiation.
 - (B) Any sonic, ultrasonic, or infrasonic wave.
- (12) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, state agency other than the department, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but not



including federal government agencies.

(13) "Radiation" means ionizing radiation and nonionizing radiation.

(14) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system that during operation can generate or emit radiation except those that emit radiation only from radioactive material.

(15) "Radioactive material" means material (solid, liquid, or gas) that emits ionizing radiation spontaneously. It includes accelerator produced, byproduct, naturally occurring, source, and special nuclear materials.

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

(17) "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(18) "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes.

(19) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium that results in the production of source material mill tailings.

(20) "Sources of radiation" means collectively, radioactive material and radiation generating equipment.

(21) "Special nuclear material" means plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or any material artificially enriched by any of the foregoing, but does not include source material.

(22) "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated under this chapter, to use, manufacture,



produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing, radioactive material.

(23) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one (1) year's decay since being used as a source of energy in a power reactor. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

(24) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five (5) years, in excess of ten (10) nanocuries per gram.

Sec. 5. (a) The Indiana department of homeland security is designated as the state agency responsible for carrying out the duties of this chapter.

(b) The executive director of the department may use the authority granted under IC 10-19-3-4 and IC 10-19-3-5 to carry out the duties of this chapter.

(c) The department shall, for the protection of the occupational health and safety, public health and safety, and environment, do the following:

(1) Develop programs for evaluation and control of hazards associated with use of sources of radiation.

(2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

(3) Adopt rules and regulations, which may provide for licensing and registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the federal government.

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this chapter.

(5) Advise, consult, and cooperate with other state agencies, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

(6) Have the authority to accept and administer grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating



to control of sources of radiation.

(8) Collect and disseminate information relating to control of sources of radiation, including maintenance of a file of:

(A) all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) registrants possessing sources of radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(C) all of the department's rules and regulations relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

(d) Registration of radiation generating equipment and regulations regarding the use of radiation generating equipment shall be in accordance with IC 16-41-35.

(e) The department shall coordinate the registration, regulation, and use of radiation generating equipment under subsection (d). The department shall do the following in carrying out the duties of this subsection:

(1) Consult with and review regulations and procedures of a state agency or department that regulates, in part, radiation or radiation generating equipment to prevent unnecessary duplication, inconsistencies, or gaps in regulatory requirements.

(2) Review, before and after, the holding of any public hearing required under the provisions of this chapter prior to promulgation, the proposed rules and regulations of any state agencies that relate to the use and control of radiation, to assure that the rules and regulations are consistent with other agencies. Proposed rules and regulations are not effective until thirty (30) days after submission to the department, unless either the governor or the department waives all or part of the thirty (30) day period. The waiting period runs concurrently with any other waiting period required by state law.

(3) Consult with state agencies in an effort to resolve inconsistencies if the department determines that a proposed rule or regulation is inconsistent with an existing rule or regulation.

(4) Notify the governor if an inconsistency under subdivision (3) has not been resolved. Upon notification, the governor may find that the proposed rules and regulations or parts thereof



are inconsistent with the rules and regulations of other agencies of the state and may issue an order to that effect in which event the proposed rules or regulations or parts thereof shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules or regulations to achieve consistency with the proposed rules or regulations.

(f) The agencies of the state shall keep the department fully and currently informed as to their activities relating to development and regulation of sources of radiation.

Sec. 6. (a) The department shall adopt rules under IC 4-22-2 for general and specific licensing of radioactive material, or devices or equipment utilizing such material. The rules must provide for the amendment, suspension, or revocation of licenses. The rules must also provide the following:

(1) Each application for a specific license shall be in writing and shall state such information as the department, by rule or regulation, may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant as the department may deem reasonable and necessary to protect the occupational health and safety and public health and safety. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation.

(2) Each license shall be in such form and contain such terms and conditions as the department may by rule or regulation prescribe.

(3) No license issued under the authority of this chapter and no right to possess or use sources of radiation granted by any license shall be assigned or in any manner disposed of unless the department shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing.

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or



orders issued in accordance with the provisions of this chapter.

(b) The department is authorized to require registration or licensing of other sources of radiation.

(c) The department is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Rules and regulations promulgated under this chapter may provide for recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirements as the department may prescribe.

Sec. 7. (a) The department shall prescribe and collect such fees as may be established by regulation for radiation protection services provided under this chapter. Fees collected under this section shall be deposited in the fire and building services fund established under IC 22-12-6-1. Services for which fees may be established include the following:

- (1) Registration of sources of radiation.
- (2) Issuance, amendment, and renewal of licenses for radioactive materials.
- (3) Inspections of registrants or licensees.
- (4) Environmental surveillance activities to assess the radiological impact of activities conducted by licensees.

(b) In determining rates of such fees, the department shall, as an objective, obtain sufficient funds therefrom to reimburse the state for all or a substantial portion of the direct and indirect costs of the radiation protection services specified in subsection (a). The department shall take into account any special arrangements between the state and a registrant, a licensee, another state, or a federal agency whereby the cost of the services is otherwise partially or fully recovered.

(c) The department may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(d) When a registrant or licensee fails to pay the applicable fee,



the department may suspend or revoke the registration or license or may issue an appropriate order.

Sec. 8. (a) For licensed activities involving disposal of low-level radioactive waste, the department shall, and for other classes of licensed activity the department may, establish by rule or regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity, in case the licensee should default for any reason in performing such requirements.

(b) All sureties required under subsection (a) that are forfeited shall be paid to the department for deposit by the state treasurer in a special fund called the radiation site closure and disposal fund. All money in this fund is hereby appropriated and may be expended by the department as necessary to complete such requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Money in the fund shall not revert back to the state general fund.

(c) For licensed activities involving the disposal of low-level radioactive waste the department shall, and for other classes of licensed activity when radioactive material that will require surveillance or care is likely to remain at the site after the licensed activities cease, the department may, establish by rule or regulation standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(d) All funds collected from licensees under subsection (c) shall be paid to the department for deposit by the state treasurer in a special fund called the radiation long-term care fund. All funds accrued as interest on money deposited in this fund are hereby appropriated and may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health and safety and the environment. Money in the fund shall not revert back to the state general fund. Notwithstanding any other provisions of this subsection, if title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for



which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(e) The sureties or other financial arrangements and funds required by subsections (a) and (c) shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the U.S. Nuclear Regulatory Commission pertaining to closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(f) In order to provide for the proper care and surveillance of sites subject to subsection (c), the department, on behalf of the state, may acquire by gift or transfer from another government agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the department.

(g) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(h) In the event that a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump sum deposit shall be made to the radiation long-term care fund. The amount of such deposit shall be determined by the department taking into account the factors in subsections (c) and (e).

(i) All state, local, or other governmental agencies, shall be exempt from the requirements of subsections (a) and (c).

Sec. 9. The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

Sec. 10. The department is authorized to require by rule, regulation, or order the keeping of such records with respect to activities under licenses and registration certificates issued under this chapter as may be necessary to effectuate the purposes of this chapter. These records shall be made available for inspection by,



or copies thereof shall be submitted to, the department on request.

Sec. 11. (a) The governor, on behalf of the state, is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain of the commission's licensing and related regulatory authority with respect to byproduct, source, and special nuclear materials and the assumption of regulatory authority therefore by this state.

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

Sec. 12. (a) The department is authorized to enter into an agreement or agreements with the U.S. Nuclear Regulatory Commission under Section 274i of the Atomic Energy Act of 1954, as amended, other federal government agencies as authorized by law, other states or interstate agencies, whereby this state will perform on a cooperative basis with the commission, other federal government agencies, other states, or interstate agencies, inspections or other functions relating to control of sources of radiation.

(b) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter, and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

Sec. 13. Ordinances, resolutions, or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies, other than the department under section 5 of this chapter, relating to byproduct, source, and special nuclear materials shall be superseded by this chapter.

Sec. 14. (a) Rules shall be promulgated under this chapter in accordance with IC 4-22-2.

(b) Orders shall be issued under this chapter in accordance with IC 4-21.5.

(c) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material



or for licensing disposal of low-level radioactive waste, the department shall provide:

- (1) an opportunity, after public notice, for written comments and a public hearing, with a transcript;
- (2) an opportunity for cross-examination; and
- (3) a written determination of the action to be taken, which is based upon findings included in the determination and upon evidence presented during the public comment period.

(d) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material or for licensing disposal of low-level radioactive waste, the department shall prepare, for each licensed activity that has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The analysis shall be available to the public before the commencement of hearings held pursuant to subsection (c) and shall include the following:

- (1) An assessment of the radiological and nonradiological impacts to the public health.
- (2) An assessment of any impact on any waterway and groundwater.
- (3) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted.
- (4) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials that will remain on the site after such decommissioning, decontamination, and reclamation.

(e) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by subsection (d) prior to completion of such analysis.

(f) Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may adopt emergency rules under IC 4-22-2-37.1 or issue emergency orders under IC 4-21.5-4 to address the emergency.

Sec. 15. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the department may, in lieu of issuing an administrative order, apply



for an order from a circuit or superior court in the county in which the person takes a substantial step toward violating a law, or a violation occurs. Upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, a restraining order, or other order may be granted.

Sec. 16. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in conformance with rules and regulations, if any, promulgated in accordance with the provisions of this chapter.

Sec. 17. The department shall have the authority in the event of an emergency to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

Sec. 18. (a) Any person who violates any licensing or registration provision of this chapter or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder, or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this chapter may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars (\$10,000). If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(b) Whenever the department proposes to subject a person to the imposition of a civil penalty under the provisions of this section, it shall issue an order in accordance with IC 4-21.5.

(c) The department is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The department shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the department for collection.

(d) All money collected from civil penalties under this section shall be deposited in the fire and building services fund established by IC 22-12-6-1.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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