

BILL ANALYSIS

C.S.H.B. 1567
By: West, George “Buddy”
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In Texas, there is widespread use of radioactive isotopes for numerous beneficial purposes, including energy production, biomedical research, and medical procedures such as cancer diagnosis and treatment. These activities produce low level radioactive waste, which is often non-radioactive materials that have been exposed to neutron radiation or contaminated with radioactive materials. These may include protective shoe coverings and clothing, mops, rags, equipment and tools, medical equipment such as syringes and laboratory tissues, reactor water treatment residues, and dirt. In many cases, this waste is stored on-site at various facilities through Texas, posing a danger to human health and the environment, as well as a risk for exposure through terrorism or natural disaster.

Through the enactment of federal law, Texas joined Maine and Vermont in the Texas Low-Level Radioactive Waste Disposal Compact (Texas Compact) for the disposal of low-level radioactive waste generated in all three states. Despite several attempts, the state of Texas has taken no action to actively pursue methods to permanently manage nuclear waste generated from utilities, industry, and numerous medical and research operations in Texas.

C.S.H.B. 1567 modifies current statutes to provide for the disposal of low-level radioactive waste in Texas. The bill establishes procedures for the Texas Department of Health to accept and assess multiple applications from private entities for the license to dispose of Texas Compact waste as well as waste generated by the federal government. The bill amends current statutes addressing the costs associated with the decommissioning and perpetual care of the disposal site, as well as other contingencies.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly delegated to the Texas Department of Health in SECTION 4 (Sec. 401.218, 401.224, and Sec. 401.232); Health and Safety Code. Rulemaking authority is further amended to the Radiation Advisory Board in SECTION 1 (Sec. 401.052), to the Texas Commission on Environmental Quality in SECTION 3 (Sec. 401.104) and the Texas Department of Health in SECTION 7 (401.245). Rulemaking authority is transferred from the Texas Commission on Environmental Quality to the Texas Department of Health in SECTION 4 (Sec. 401.201, 401.202, 401.204, and Sec. 401.205). The C.S.H.B. 1567 makes minor rulemaking changes that affect the Radiation Advisory Board in SECTION 6 (Sec. 401.248), SECTION 7 (Sec. 401.245), and SECTION 9 (Sec. 401.301); Health and Safety Code.

ANALYSIS

SECTION 1. Sections 401.052 (c), (d), and (f), Health and Safety Code amended as follows:

Sec. 401.052 (c) Requires that the board must consult with the advisory board when adopting rules under this section.

(d)(1) Establishes the assessment of a fee not to exceed ten dollars per cubic foot of shipped low-level radioactive waste to be paid by the shipper. This fee is to be used only by the department for

emergency planning and response to transportation accidents or other incidents involving low-level radioactive waste. The monies are to be collected by the disposal license holder and remitted to the department for deposit into the radiation perpetual care fund.

(d)(2) Requires under the rules adopted under Subsection (b)(5) that fee assessments shall be suspended when the amount of fees collected reaches \$500,000, except if the balance of fees collected is reduced to \$350,000 or less. Fee assessments shall be reinstituted to bring the balance of fees collected to \$500,000.

(f) Establishes a definition for “shipper”. Deletes the definition of “Authority”.

SECTION 2. Sec. 401.071, Subchapter C, Chapter 401, Health and Safety Code, GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. The commission may allow the staff to conduct research, study and advise and consult the department on matters relating to low-level radioactive waste.

SECTION 3. Sec. 401.104(b), Health and Safety Code. Requires that the commission by rule shall provide for licensing for the disposal of radioactive material for the disposal of by-product material defined by Section 401.003(3)(B) and the disposal of low-level radioactive waste under Subchapter F, except as provided by Subsection (e).

SECTION 4. Subchapter F, Chapter 401, Section 401.2005, Health and Safety Code amended to read as follows:

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE WASTE

Sec. 401.2005. DEFINITIONS. Establishes definitions for “compact waste”, “compact waste disposal facility”, “disposal facility site”, “federal facility waste”, “federal facility waste disposal facility”, “host state”, and “party state”.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. Changes jurisdiction of the regulatory agency over low-level radioactive waste from Texas Commission on Environmental Quality (TCEQ) to Texas Department of Health (TDH).

Sec. 401.202. LICENSING AUTHORITY. (a) Gives the department permission to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste.

(b) Requires the department to receive applications and restricts them from issuing more than one license for a single disposal facility that meet specific licensing criteria. Deletes Sec. 401.203 relating to license restricted to public entity.

Sec. 401.204. ACQUISITION OF PROPERTY. (a) Establishes that an application for a disposal facility license may not be considered unless the applicant has acquired the title to and interest in land and buildings as required by the department rules.

(b) Provides for a mechanism for the applicant for a disposal license who is unsuccessful in acquiring a mineral right that the rules under Subsection (a) require the applicant to obtain to enter into a surface use agreement that restricts mineral access to the extent necessary to prevent intrusion into the disposal facility site.

(c) Provides that if the applicant cannot reach a surface use agreement described in Subsection (b) with a private landowner, the Attorney General will by request of the department institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire the mineral rights.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Establishes the responsibilities of the disposal facility license holder is

required to follow when managing and disposing of waste.

(b) Establishes the requirements of the facility license holder must follow in the management, disposal, conveyance and decommissioning of federal facility waste, if authorized under Section 401.216.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) Requires that the disposal facility license holder shall convey to the state, at no cost to the state, title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance of the waste occurs when the manifest is signed. This section does not apply to federal facility waste accepted at a disposal facility authorized under Section 401.216 to dispose of federal facility waste.

(b) The title and all related rights and interest conveyed under this section are the property of the department on the state's behalf. The department may administer the waste as property in the name of the state.

Sec. 401.206. RESIDENT INSPECTOR. (a) Requires the disposal facility license holder to reimburse the department for the salary and other expenses of two or more resident inspectors employed by the department.

(b) The department may require the facility license holder to provide facilities at the disposal site for the resident inspectors.

Sec. 401.207. OUT-OF-STATE WASTE. Establishes the conditions under which the license holder may accept low-level radioactive waste from another state. Deletes language concerning a state having an operating low-level radioactive waste disposal site at which the state is willing to accept the waste generated in this state.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. Makes conforming changes from commission to department.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Provides for the transfer of radioactive waste, land and buildings to the state or to the federal government under this chapter.

Sec. 401.211. LIABILITY. (a) Establishes that the title to low-level radioactive waste, land and buildings to the state or federal government does not relieve a license holder of liability for any act or omission performed before the transfer.

(b) Establishes that federal waste is the liability of the federal government.

(c) Requires the license holder to indemnify the state for any liability imposed on the state or federal law, as required by the department for the disposal of federal facility waste.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. Makes conforming changes from commission to department.

Sec. 401.213. INTERSTATE COMPACTS. Makes conforming changes from commission to department.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. Includes language that recognizes this compact facility as a regional disposal facility under Chapter 403 for the purposes of the federal Low-Level Radioactive Waste Policy Act as amended by 42 U.S.C. Sections 202b-202j.

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Provides for the disposal facility's acceptance of waste that is properly processed and packaged.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) Allows to authorize the disposal facility license holder to dispose of federal facility waste only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste.

(b) Acceptance of federal facility waste is authorized under Section 401.216 and allows the

department to restrict the amount and type of waste the license holder may accept. The restrictions are based on 10 C.F.R. Section 61.41.

(c) The department may not allow the commingling of compact and federal facility waste.

(d) Establishes a provision that the disposal facility license holder may not accept federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the disposal facility.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. Establishes the locations that the department is prohibited from issuing a license for a disposal facility or authorize the operation of a federal waste disposal facility.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) Establishes that Class A, Class B, and Class C low-level radioactive waste have the meanings assigned by department rule.

(b) Requires that the disposal facility license holder shall dispose of Class B and Class C low-level radioactive waste within reinforced concrete containers and within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete that can be monitored and retrieved.

(c) Provides for, by department rule, the handling of Class A low-level radioactive waste like Class B and C waste disposal.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE.

(a) Establishes that the techniques for managing low-level radioactive waste must be submitted by the applicant to the department or its designee relating to the reasonableness of the disposal method to be practiced at the facility or facilities.

(b) Prior to determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques including waste processing and reduction at the site and the use of the aboveground isolation facilities.

Sec. 401.220. DESIGN OF FACILITY. Requires the designs of the facility to incorporate safeguards against naturally occurring hazards and meteorological conditions such as hurricanes, tornados, earthquakes, earth tremors, violent storms and susceptibility to flooding.

Sec. 401.221. MIXED WASTE. (a) Establishes a definition of “mixed waste” as a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) Requires the disposal license holder who accepts mixed waste at a compact or federal facility must comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Sec. 401.222. TERM OF LICENSE. Establishes that the term of license expires on the 15th anniversary of its date of issuance of the license and may be renewed for one or more terms of 10 years.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. Requires the department and the local public health officials to develop a health surveillance survey for the population located in the vicinity surrounding the disposal facility.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. Requires the department to adopt rules relating to the packaging of radioactive waste.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the disposal facility license holder to determine that the waste received from a shipment to the compact or federal facility complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) Requires at least a 72 hour written notice before the shipment to the disposal facility or

federal facility if the waste to be shipped is in excess of 75 cubic feet.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) Provides that improperly packaged or processed waste received by a disposal facility must be properly packaged by the facility. A fee will be assessed onto the shipper by the facility.

(b) Requires the disposal facility license holder to report any person who delivers improperly processed or packaged waste to the federal government and state agencies that establish rules for processing, packaging, and transporting.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) Establishes that the selection of the application for the disposal facility is the responsibility of the department and sets forth requirements of the department to issue notice of opportunity to submit an application in accordance with Section 401.228 and to review and evaluate all applications for administrative completeness.

(b) provides a provision for the department to select the next applicant with the highest comparative merit if the previously selected applicant was rejected.

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Outlines a detailed procedure for the selection of application for the disposal facility license by the department. No later than January 1, 2004, the department is required to give notice to receive applications to the Secretary of State for publication in the Texas Register. The department will accept applications for a 30 day period, beginning 180 days after the date of the Texas Register notice. The application fee will be a non-refundable \$500,000.

Sec. 401.229. APPLICATION PROCESSING FEE. Requires that applications must include a non-refundable \$500,000 application processing fee.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) Requires that the department will accept applications for a disposal facility license for a 30-day period beginning 180 days after the date notice is published under Section 401.228.

(b) Requires that the department issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the department to be administratively incomplete no later than the 45th day after the date an application is received.

(c) Establishes for not more than three 30-day opportunities for an applicant who receives an administrative notice of deficiency to comply with the departments request for completion.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. Directs the department to consider as administratively complete an application for which the department has received the portions of the application necessary to allow the department to review the technical merits of the application set forth in this section.

Sec. 401.232. EVALUATION OF APPLICATIONS; DEPARTMENT SELECTION. (a) Directs the department to have prepared by the personnel department or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233- 401.236.

(b) Directs the department to conduct at least one public meeting in the county or counties where a disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The department shall set the time and place of the meetings after the close of the period for administrative review of the applications.

(c) Gives the department permission to issue a request for further information to each applicant whose application has been determined insufficient by the department.

(d) Directs the department to provide an applicant two 30-day opportunities to adequately respond if they have had further information requested of them.

(e) Directs the department to use written evaluations and applications materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The

department is required to evaluate each application for statutory criterion to compare the relative merits of the applications giving equal weight to each criterion, within a tier of the criteria; the greatest weight given to tier one criteria, greater weight to tier two than to tier three criteria, and the least weight to tier four criteria.

(f) Prior to publication of the notice of the department's intention to accept applications under Section 401.228, the department by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the department may evaluate applications.

(g) Requires the department to select the application that has the highest comparative merit based on written evaluations and application materials no later than the 180th day after it receives the last timely filed application.

Sec. 401.233. TIER 1 CRITERIA. (a) The department shall consider as tier one criteria: natural characteristics of the disposal facility site; the adequacy of the facility to safely, shield, and contain low-level radioactive waste from mankind and mankind's environment; and the adequacy of financial assurance as related to the proposed activities.

(b) Defines the natural characteristics of disposal facility site. Such as, the suitability of the site including: geological characteristics; topography, including features relating to erosion; surface and underground hydrology; surface and underground hydrology; meteorological factors; and natural hazards; compatibility of disposal activities with any use of land near the site; the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the facility site, including analysis of the conditions of the site and establishes trends of the natural parameters, including: natural background radioactivity levels; radon gas levels; air particulate levels; soil characteristics; surface water and ground water characteristics; flora and fauna at the site; and possible effect of disposal activities on flora and fauna.

(c) Defines the adequacy of the disposal facility as capability of the facility to isolate, shield, and contain low-level radioactive waste in conformity with federal standards; acceptable operational safety; and acceptable long-term safety as demonstrated by analysis or study.

(d) Defines financial assurance criteria as adequacy of the applicant's financial qualifications to conduct the licenses activities, any required decontamination, decommissioning, reclamation or disposal, and control and maintenance of the facility after the cessation of active operations. Address any unanticipated events that would pose a risk to public health and safety after decommissioning and closure of the facility. Adequacy of the applicant to cover potential injury to any property or person. Adequacy of the applicant's financial security as required by department rule. Also requires that the applicant will be able to maintain adequate financial security.

Sec. 401.234. TIER 2 CRITERIA. Suitability of the facility site that are associated with proposed activities and their engineering and design. Suitability of the proposed disposal facility for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under Section 401.053.

Sec. 401.235. TIER 3 CRITERIA. The department shall consider applicant's technical qualification to receive, store, process, and dispose of low-level radioactive waste. Experience in management and disposal of low-level waste. Previous operating practices in this state elsewhere. Show record of compliance with environmental statutes, rules, and licenses in this state and any other jurisdiction. Training programs proposed for its employees. Monitoring, record keeping and reporting plans. Low-level radioactive waste spill detection and cleanup plans. Decommissioning and post closure plans, security plans, monitoring and protection plans for workers, and emergence plans. Plans for background monitoring during the license period including: natural background radioactivity levels; radon gas levels; air particulate levels; soil characteristics; surface water and ground water characteristics; and flora and fauna at the site. Finally, consider the applicants ability to manage the disposal facility and activities for the term of the license.

Sec. 401.236. TIER 4 CRITERIA. Applicant must show the department the compatibility of the use of land near the disposal facility site that could be affected by construction and operation of the facility. Possible socioeconomic effects on communities in the host county of proposed disposal facility,

operation of the proposed disposal facility, and related transportation of low-level radioactive waste to the disposal facility.

Sec. 402.237. TECHNICAL REVIEW. The department, immediately on the selection of the application with the highest comparative merit, shall begin a technical review of the selected application. The department shall complete the review and prepare a draft license no later than the 15th month in which the technical review begins. The department shall give priority to the review of the selected application, except those the commissioner determines necessary to avert or address a health and safety emergency.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the review of the selected application and preparation of the draft license, the department shall publish the notice for a request of a contested case hearing by a person affected. Specifies what shall be included in the notice and publication.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. Allows for an administrative law judge to conduct a contested case hearing on the application. Prohibits the administrative law judge from admitting a party to the contested case a person other than the applicant, the commissioner, or a person affected. Allows the administrative law judge to issue a proposal for decision no later than the first anniversary of the publication date. The department shall take final action on the proposal for decision of the administrative law judge no later than the 90th day after the proposal is issued.

Sec. 401.240. JUDICIAL REVIEW. Allows for a person affected by the action of the commissioner or the department to file a petition for judicial review. The petition must be filed not later than the 30th day after the date of the final action. Disallows a court to substitute its judgement for the judgment of the commissioner or department, but may affirm the action and shall reverse or remand a case for further proceedings if it is found that there is a violation of a constitution or statutory provision, if they are in excess of the department's statutory authority, unlawful procedures, affected by other error of law, are not reasonably supported by substantial evidence, or there is found abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 401.241. SECURITY. Requires the department in determining the amount of security required of a disposal facility to consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety that occur after the decommissioning and closure of the disposal facility. The security amount required by a license holder may not be less than \$20 million. Allows the department to use interests earned on the security to offset any other financial obligations incurred by the license holder. The department may also require a license holder to provide security in the form of liability insurance.

Sec. 401.242. ACCEPTANCE OF WASTE. Requires the department to mandate the disposal facility license holder to follow the schedule submitted to the department. Allows for the specification for a license holder to accept hazardous waste before the disposal facility begins operation.

Sec. 401.243. COMPLIANCE HISTORY. Allows for the specification for the department to deny an application for a license based on the applicants history.

SECTION 5. Section 402.252, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Section 401.244. Amended as follows:

Sec. 401.244. HOST COUNTY PUBLIC PROJECTS. Mandates that the disposal facility license holder on each quarter shall transfer to the commissioners court 7.5 percent of the gross receipts from compact waste received at the disposal facility and any federal facility waste received at the disposal facility. Allows the commissioners court of the host county to spend money for public projects in the host county or disburse the money to other local entities or to public nonprofit corporations to be spent

for local public projects. Money received from the disposal facility license holder may be spent only for public projects in the host county. The money received by the commissioners court is not a loan or grant-in-aid subject to review by a regional planning commission.

SECTION 6. Section 402.219, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered at Section 401.248. Amended as follows:

Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. Makes conforming changes. Adds “compact waste” and “facility” to disposal.

SECTION 7. Section 402.272, 402.273, and 402.276, Health and Safety Code, are transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Sections 401.245, 401.246, and 401.247. Amended as follows:

Sec. 401.245. COMPACT WASTE DISPOSAL FEES. Allows a disposal facility license holder who receives low-level radioactive waste for disposal to collect a waste disposal fee. Allows rules adopted under this section to include provisions establishing classification of customers and services, and applicability of fees. A rule or order adopted by the department under this section must not conflict with a ruling of a federal regulatory body. Makes minor conforming change.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. Makes conforming changes by adding “compact waste”, “compact waste facility license holder”, “facility and the disposal facility”. Provides for a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at a disposal facility. Mandates that the department shall use the methods used by the PUC when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees. Deletes current language under Subsection (a), (b) and (c) relating to an amount sufficient to fund a rangeland and wildlife management plan, provides an amount necessary to fund debt service, fees and charges associated with the issuance and payment of bonds, and what is required to be included in a waste disposal fee.

Sec. 401.247. REASONABLE AND NECESSARY EXPENSES. Codifying changes.

SECTION 8. Section 402.275, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Section 401.249. Amended as follows:

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. Defines the low-level radioactive waste fund as being under the jurisdiction of the state treasury. Makes the fund an interest-bearing fund and shall be deposited to the credit of the fund. Allows for each payment made by a party state of the radioactive waste compact established that is credited to the low-level radioactive waste fund to use only one-half of the fund for the construction of the disposal facility and the remainder shall be credited to the radiation and perpetual care fund. Mandates that Section 403.095, Government Code, does not apply to the low-level radioactive waste fund. Deletes language in Subsection (c) in relation to money received by the authority on planning and implementation fees. Deletes language in Subsection (d) & (e) concerning the use of money in the low-level radioactive waste fund, and payment for debt services and related cost. Codifying changes are made.

SECTION 9. Section 401.301(b), Health and Safety Code. Makes conforming changes. Deletes Subsection (b)(5) the collection of payments to the low-level radioactive waste fund and general revenue as provided by Section 402.2721.

SECTION 10. Section 403.001(a), Health and Safety Code. Is amended by making conforming changes.

SECTION 11. Section 5.013(a), Water Code. Is amended by making conforming changes.

SECTION 12. Section 401.153 and 401.306, Health and Safety Code, Chapter 402, Health and Safety Code, and Section 51.0511, Natural Resources Code. Repealed.

SECTION 13. Effective Date of Act, September 1, 2003.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 401.052(d)(C) excludes the language “or other incidents” that was found in the original version.

Section 401.071 adds language to include the powers of the Texas Commission on Environmental Quality allow the staff to conduct research, study and advise and consult the department on matters relating to low-level radioactive waste.

SECTION 3. Sec. 401.106(a) related to process by with the board by rule may exempt a source of radiation from the licensing or registration requirements was deleted from the substitute.

SECTION 4. Sec. 401.153(b) relating to the rules adopted concerning the opening date of a low-level radioactive waste disposal site was deleted from the substitute.

SECTION 5. in original bill changed to SECTION 4: SUBCHAPTER F: The definitions “compact waste disposal facility”, “disposal facility site” and “federal facility waste disposal facility” were added to clarify the distinction between facility and site. Throughout the bill there are numerous corrective changes made between facility and site.

This bill clarifies the language to Section 401.202(b) restricting the department from issuing more than one license for a single compact waste disposal facility, and strikes the language “are as stringent as necessary” as it relates to federal requirements for disposal in 401.202 (b) (2). In addition, the word “designee” is struck from the bill for clarification purposes.

Section 401.2051 adds language that clarifies when the conveyance of waste is accepted.

Under the resident inspector section of the bill Section 401.206, two or more inspectors have been instituted to suit the inspection needs of more than one facility.

Section 401.204 allows the applicant of a compact waste disposal license who is unsuccessful in the acquisition of a mineral right to enter into a surface use agreement with the land owner. This also gives the Attorney General, upon request of the department condemnation proceedings.

Section 401.207 dealing with out-of-state waste, subsections (2) and (4) were struck.

Section 401.211(b) language is added to clarify that federal waste is the liability of the federal government.

Section 401.216 “that is operated exclusively for the disposal of federal facility waste and that is” is added for clarification purposes regarding the federal waste facility. Additionally, it prohibits the acceptance of federal waste at a federal disposal facility until the license holder begins accepting compact waste at the compact disposal facility.

Section 401.217 “in a county any part of which is located 62 miles or less from an international boundary is added as another restriction in which the department cannot issue a license.

Section 401.218 adds additional requirements to address the disposal procedures of Class B and Class C waste. In addition, language has been added to define Class A waste.

Section 401.222 the term of license was reduced to 15 years from 35 years and establishes a renewal schedule.

Section 401.227 the selection of the application for the compact waste disposal facility is the responsibility of the department and not the commissioner of the department.

Section 401.228 changes the date of notice to receive applications from October 1, 2003 to January 1, 2004.

Section 401.229 every reference to “commitment fee” is changed to “application processing fee”.

Section 401.230 establishes not more than three 30-day opportunities for an applicant who receives an administrative notice of deficiency.

Section 401.232 makes non-substantial changes from commissioner to department and changes each county to county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located. In addition, this section requires the department to select the application with the highest comparative merit no later than the 180th day after it receives the last timely filed application.

Section 401.233 “plans for the collection of prelicense monitoring data” is added for clarification purposes. Financial assurance criteria was expanded to address any unanticipated extraordinary events that would pose a risk to public health and the environment that may occur at the disposal facility site after decommissioning and closure of the disposal facility or facilities.

Section 401.238 directs the department to give the matter of licensure of the applicant priority, except in cases that involve a health and safety emergency.

Section 401.239 clarifies and streamlines the contested case process and those who may enter into a contested case.

Section 401.241 establishes security requirements of a compact waste disposal facility license holder. It requires that the amount of security required of a license holder may not be less than \$20 million dollars.

Section 401.242 allows a license holder who possesses a permit to process, store, or dispose of hazardous waste, to accept hazardous waste under Section 401.231 before the compact waste disposal facility begins operation.

Section 401.252 changes the host county fee from 10 percent to 7.5 percent.

Section 401.245 includes provisions to clarify the criteria in which the fees are adopted on classification of customers and services and the applicability of fees.

Section 401.246 adds language to direct the department to use the methods used by the Public Utility Commission when establishing overall revenues, reasonable rate of return and invested capital for the compact facility.

Section 401.249 establishes a section to address the payments made to the low-level radioactive waste fund.

Sections 401.153 and 401.306 and Chapter 402 of the Health and Safety Code are repealed. Section 51.0511 of the Natural Resources Code are repealed.

Throughout C.S.H.B. 1567 language is taken from several sections of Chapter 402 which was repealed and added into new sections into Chapter 401. Section 401.053 (b) is repealed.

Codifying changes are made throughout the substitute.

The effective date remains the same as in the original version of HB 1567.