

BILL ANALYSIS

Senate Research Center
78R13754 JTS-F

C.S.H.B. 1567
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Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

C.S.H.B. 1567 defines unsuitable sites for the disposal of low-level radioactive waste; provides rules for the application process of disposing of such radioactive waste; requires certain procedures for waste disposal and conveyance; and requires certain levels of financial assurances sufficient to provide for the decommissioning and long term care of such facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 2 (Section 401.052, Health and Safety Code) and to the Texas Department of Health in SECTION 7 (Sections 401.201, 401.204, 401.218, 401.224, and 401.232, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 401.003(11), Health and Safety Code, to define "perpetual care account" rather than "fund."

SECTION 2. Amends Sections 401.052(b), (c), (d), (e), and (f), Health and Safety Code, as follows:

(b) Requires rules adopted under this section for low-level radioactive waste to meet certain conditions.

(c) Requires the Texas Board of Health (board), in adopting, rather than promulgating, rules under this section, to consult with the radiation advisory board (advisory board), rather than the Texas Commission on Environmental Quality (TCEQ).

(d)(1) Provides that fees assessed under Subsection (b)(5) are to follow certain guidelines.

(e) Requires money expended from the perpetual care account, rather than radiation and perpetual care fund, to respond to accidents involving low-level radioactive waste to be reimbursed to the perpetual care account by the responsible shipper or transporter according to rules adopted by the board. Makes conforming changes.

(f) Deletes the definition for "authority." Makes a nonsubstantive change.

SECTION 3. Amends Subchapter C, Chapter 401, Health and Safety Code, by adding Section 401.071, as follows:

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. (a) Authorizes TCEQ to take certain actions.

(b) Authorizes TCEQ, in carrying out its duties under this section, to take certain actions.

SECTION 4. Amends Section 401.104(b), Health and Safety Code, to require TCEQ by rule, except as provided by Subsection (e), to provide for licensing for the disposal of radioactive material except 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. Requires the Texas Department of Health (TDH) by rule to provide for licensing the disposal of by-product material defined by Section 401.003(3)(B).

SECTION 5. Amends Section 401.109, Health and Safety Code, as follows:

- (a) Requires the Texas Department of Health (TDH) or TCEQ to deposit security or evidence of security provided under this section to the credit of the perpetual care account.
- (b) Requires TDH of TCEQ to require a holder of a license that authorizes the disposal of low-level radioactive waste as provided by Subchapter F to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter.
- (c) Created from existing text. Redesignates existing Subsection (c) as (d) and redefines "security."

SECTION 6. Amends Section 401.152(b), Health and Safety Code, to make a conforming change.

SECTION 7. Amends Subchapter F, Chapter 401, Health and Safety Code, as follows:

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. Defines "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. Requires TDH, rather than TCEQ, to directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. Requires the person making the disposal to comply with this subchapter and TDH, rather than TCEQ, rules.

Sec. 401.202. LICENSING AUTHORITY. (a) Authorizes TDH, rather than TCEQ, to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) Requires TDH to receive applications for and to issue not more than one license for a single compact waste disposal facility. Authorizes TDH to issue the license only for a facility that meets certain criteria.

(c) Requires TDH, except as provided by Section 401.216, to provide that the disposal facility license authorizes only the disposal of compact waste.

Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. Deletes this section.

Sec. 401.204. ACQUISITION OF PROPERTY. (a) Prohibits an application for a compact waste disposal facility license from being considered unless the applicant has acquired the title to and any interest in land and buildings as required by TDH, rather than TCEQ, rule.

(b) Authorizes TDH, if an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, to allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal facility site.

(c) Requires the attorney general, if an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, to, on request of TDH, institute condemnation proceedings as provided under Chapter 21, Property Code (Eminent Domain), to acquire fee simple interest in the mineral rights.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the compact waste disposal facility license holder to take certain actions.

(b) Requires the compact waste disposal facility license holder, if authorized under Section 401.216 to dispose of federal facility waste, to perform certain actions.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) Requires the compact waste disposal facility license holder to 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. Provides that acceptance occurs when the acceptance criteria specified in the license have been satisfied. Provides that this section does not apply to federal facility waste accepted at a federal facility disposal facility.

(b) Provides that the title and all related rights and interest in compact waste conveyed under this section are the property of TDH on the state's behalf. Authorizes TDH to administer the waste as property in the name of the state.

Sec. 401.206. RESIDENT INSPECTOR. Makes conforming and nonsubstantive changes.

Sec. 401.207. OUT-OF-STATE WASTE. Makes nonsubstantive and conforming changes. Deletes existing text relating to accepting low-level radioactive waste generated from a state having an operating low-level radioactive waste disposal site at which that state is willing to accept low-level radioactive waste generated in this state.

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

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Requires low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter to be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Sec. 401.211. LIABILITY. (a) Provides that the transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission, rather than fraudulent or negligent acts, performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) Provides that the acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the low-level radioactive waste accepted, stored, or disposed of.

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

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. Makes a conforming change.

Sec. 401.213. INTERSTATE COMPACTS. Makes a conforming change.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. Provides that the compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act (LLRWPA), as amended by the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1985 (42 U.S.C. Sections 2021b-2021j).

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Requires the compact waste disposal facility, subject to limitations provided by Sections 401.207 and 401.248, to accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

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

(b) Prohibits the compact waste disposal facility, in addition to any restrictions imposed by the performance objective established by 10 C.F.R. 61.41, from accepting for disposal more than 10 million cubic yards of federal facility waste at the federal facility waste disposal facility.

(c) Prohibits TDH from allowing commingling of compact waste and federal facility waste.

(d) Prohibits the compact waste disposal facility license holder from accepting federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the compact waste disposal facility.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. Prohibits TDH from issuing a license for a compact waste disposal facility located in certain areas.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) Provides that in this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by TDH rule.

(b) Requires the compact waste disposal facility license holder to dispose of Class B low-level radioactive waste and Class C low-level radioactive waste according to certain guidelines.

(c) Authorizes TDH, by rule, to require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). Requires rules adopted under this subsection to be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61, to the extent practicable.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) Requires an applicant, as a condition for obtaining a compact waste disposal facility license, to submit to TDH or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Requires an applicant, before determining the techniques to be used for

managing low-level radioactive waste, to study alternative techniques, including waste processing and reduction at the site of waste generation and at the disposal facility and the use of aboveground isolation facilities.

Sec. 401.220. DESIGN OF FACILITY. Provides that the design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Sec. 401.221. MIXED WASTE. (a) Defines “mixed waste.”

(b) Requires the compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility to 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. Provides that the compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

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

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

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the compact waste disposal facility license holder, on arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, to determine that the waste 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 a person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet to give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the disposal facility or a federal facility waste disposal facility begins. Requires the written notice to contain information required by TDH.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the compact waste disposal facility license holder, if low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, to properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) Requires the compact waste disposal facility license holder to report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) Requires TDH, in selecting an application for the compact waste disposal facility license, to proceed under certain guidelines.

(b) Requires TDH, if the selected application is rejected or denied by TDH, to

select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Requires TDH, not later than January 1, 2004, to give to the secretary of state for publication in the Texas Register notice of certain information.

Sec. 401.229. APPLICATION PROCESSING FEE. Requires an application for a compact waste disposal facility license to include payment of an application processing fee of \$500,000 to TDH. Prohibits TDH from reviewing an application for administrative completeness until TDH receives the application processing fee. Provides that the application processing fee is nonrefundable.

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

(b) Requires TDH, not later than the 45th day after the date an application is received, to issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by TDH to be administratively incomplete.

(c) Requires TDH to provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) Requires TDH to reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. Requires TDH to consider as administratively complete an application for which TDH has received the portions of the application necessary to allow the review of certain technical merits of the application, including specified items.

Sec. 401.232. EVALUATION OF APPLICATIONS; DEPARTMENT SELECTION. (a) Requires TDH to have prepared by TDH personnel 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) Requires TDH to conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. Requires TDH to set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) Authorizes TDH to issue a request for further information to each applicant whose application is determined by the commissioner to be insufficient for the purposes of TDH's evaluation.

(d) Requires TDH to provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of TDH.

(e) Requires TDH to use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. Requires TDH to evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving equal weight to each criterion within a tier of criteria and the greatest

weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Authorizes TDH, by rule, to adopt criteria in addition to the criteria under Sections 401.233-401.236, by which TDH may evaluate applications, before publication of the notice of TDH's intention to accept applications under Section 401.228. Requires the criteria to be consistent with those sections.

(g) Requires TDH, based on the written evaluations and application materials, to select the application that has the highest comparative merit, not later than the 180th day after it receives the last timely filed application.

Sec. 401.233. TIER 1 CRITERIA. (a) Requires TDH to consider as tier 1 certain criteria.

(b) Provides that there are certain natural characteristics of the disposal facility site.

(c) Provides that adequacy of the proposed disposal facility or facilities and activities include certain qualities.

(d) Provides that financial assurance criteria include certain criteria.

Sec. 401.234. TIER 2 CRITERIA. Requires TDH to consider as tier 2 certain criteria.

Sec. 401.235. TIER 3 CRITERIA. Requires TDH to consider as tier 3 criteria certain qualities of the applicant.

Sec. 401.236. TIER 4 CRITERIA. Requires TDH to consider as tier 4 certain criteria.

Sec. 401.237. TECHNICAL REVIEW. (a) Requires TDH to begin a technical review of the selected application, immediately on TDH's selection of the application that has the highest comparative merit in accordance with Section 401.232.

(b) Requires TDH to complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) Requires TDH to give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before TDH, except those the commissioner of public health determines necessary to avert or address a health and safety emergency.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. Requires TDH, on completion of the technical review of the selected application and preparation of the draft license, to publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. Requires the notice to include a statement that the draft license is available for review on the TDH website and that the draft license and the application materials are available for review at TDH and in the county or counties in which a site for the proposed disposal facility is located. Requires notice to be published in the Texas register and in a newspaper of general circulation in each county in which a site for the proposed disposal facility is located. Requires the applicant to mail the notice by certified mail to each person who owns land adjacent to the site of the proposed disposal facility site.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) Requires an administrative law judge of the State Office of Administrative Hearings (SOAH) to conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) Prohibits the administrative law judge from admitting as a party to the contested case hearing a person other than the applicant, the commissioner, or a person affected.

(c) Requires the administrative law judge to issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) Requires TDH to take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Sec. 401.240. JUDICIAL REVIEW. (a) Authorizes a person affected by an action of the commissioner or TDH under this subchapter, notwithstanding any other law, to file a petition for judicial review of the action only after TDH takes final action on a license application under Section 401.239(d). Requires a petition to be filed not later than the 30th day after the date of the final action.

(b) Prohibits a court, in its review of an action under this subchapter, from substituting its judgment for the judgment of the commissioner or TDH on the weight of the evidence the commissioner or TDH considered, but authorizes the court to affirm the action in whole or in part and requires the court to reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions fall under certain criteria.

Sec. 401.241. SECURITY. (a) Requires TDH, in determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, to also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

(b) Prohibits the amount of security required of a license holder under this section from being less than \$20 million at the time the disposal facility site is decommissioned. Requires TDH to use interest earned on the security to offset any other financial obligations incurred by the license holder to TDH. Requires TDH to establish a schedule for the total payment of the amount of security based on certain information.

(c) Authorizes TDH, in addition to the forms of security listed under Section 401.109(c), to require a license holder under this subchapter to provide security in the form of liability insurance.

Sec. 401.242. ACCEPTANCE OF WASTE. (a) Requires TDH to require the compact waste disposal facility license holder to follow, as closely as possible, the schedule submitted to TDH under Section 401.231. Authorizes the license holder, if the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, authorizes the license holder to accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) Authorizes the director of the Bureau of Radiation Control to prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until TDH finds that the license holder is in compliance with the statute or rule found to be violated, if TDH finds that the compact waste disposal facility license holder has violated this chapter or any department rule in a manner that may endanger public

health or safety.

Sec. 401.243. COMPLIANCE HISTORY. Requires TDH, after an opportunity for a hearing, to deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter of TDH's rules under this chapter.

SECTION 8. Amends Section 402.252, Health and Safety Code, by transferring it to Subchapter F, Chapter 401, Health and Safety Code, renumbering it as Section 401.244, and amending it, as follows:

Sec. 401.244. New heading: HOST COUNTY PUBLIC PROJECTS. (a) Requires the compact waste disposal facility license holder each quarter, subject to Section 401.2446, to transfer to the commissioners court of the host county 5 percent of certain gross receipts.

(b) Authorizes the commissioners court of the host county to perform certain acts, including spending money for public projects in the host county.

(c) Authorizes money received from the compact waste disposal facility license holder under this section to be spent only for public projects in the host county that are for the use and benefit of the public at large. Deletes text regarding guidelines for the expenditure of money received under this section.

(d) Provides that funds received by the commissioners court of the host county under this section are not loans or grants-in-aid subject to review by a regional planning committee under Chapter 391, Local Government Code. Deletes text regarding detailed accounting of the money held, expended, or disbursed by the county.

SECTION 9. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Sections 401.2445 and 401.2446, as follows:

Sec. 401.2445. STATE FEE. Requires the compact waste disposal facility license holder, subject to Section 401.2446, each quarter to transfer to the state general revenue fund five percent of certain gross receipts.

Sec. 401.2446. COMPETITIVE ADJUSTMENTS FOR STATE FEE AND HOST COUNTY PUBLIC PROJECT FEES. (a) Requires TDH to periodically review the host county and state fees and similar fees or charges imposed on all comparable, privately operated low-level radioactive waste disposal facilities in operation in the United States and determine the highest combined rate of host county and state fees and similar fees or charges.

(b) Requires TDH to set the combined rate of surcharges imposed on gross receipts under Sections 401.244 and 401.2445 to be the lower of two certain amounts.

(c) Requires those reductions, if TDH reduces the surcharges imposed under Sections 401.244 and 401.2445, to be on a pro rata basis between the two surcharges.

SECTION 10. Amends Section 402.219, Health and Safety Code, by transferring it to Subchapter F, Chapter 401, Health and Safety Code, renumbering it as Section 401.248, and amending it, to delete existing Subsection (a) relating to authorizing a disposal facility, rather than a site, except as provided by an interstate compact, to accept only low-level radioactive waste that is generated in this state. Redesignates existing Subsections (b)-(e) as (a)-(d).

SECTION 11. Amends Sections 402.272, 402.273, and 402.276, Health and Safety Code, by transferring them to Subchapter F, Chapter 401, Health and Safety Code, renumbering them as Sections 401.245, 401.246, and 401.247, and amending them, as follows:

Sec. 401.245. New heading: COMPACT WASTE DISPOSAL FEES. (a) Requires a compact waste disposal facility license holder who receives low-level radioactive waste for disposal pursuant to the TLLRWDC established under Chapter 403 to have collected a waste disposal fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility, rather than the authority, for disposal.

(b) Makes a conforming change.

(d) Authorizes rules adopted under this section to include provisions establishing classification of customers and services and applicability fees.

(e) Requires fees adopted under this section to be consistent with the criteria listed under Section 401.246.

(f) Prohibits a rules or order adopted by TDH under this section from conflicting with a ruling of a federal regulatory body.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. (a) Requires compact waste disposal fees adopted by the board to be sufficient to perform certain acts.

(b) Requires TDH, to the extent practicable, to use certain methods used by the Public Utility Commission of Texas when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a). Deletes original text of Subsections (b) and (c).

Sec. 401.247. New heading: REASONABLE AND NECESSARY EXPENSES. Provides that fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

SECTION 12. Amends Section 402.275, Health and Safety Code, by transferring it to Subchapter F, Chapter 401, Health and Safety Code, renumbering it as Section 401.249, and amending it as follows:

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) Provides that the low-level radioactive waste fund is in the state treasury.

(b)-(c) Make conforming changes.

(d)-(f) Deletes these existing subsections.

SECTION 13. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.250, as follows:

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Provides that notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003.

(b) Provides that this section prevails over any other law or agreement in conflict or inconsistent with this section.

(c) Requires all payments made by a party state under Section 5.01 of the compact established under Section 403.006 to be deposited to the credit of the general revenue fund.

SECTION 14. Amends Section 401.270(e), Health and Safety Code, to make a conforming change.

SECTION 15. Amends Section 401.301(b), Health and Safety Code, to require the board by rule to set the fee in an amount that may not exceed the actual expenses annually incurred take certain actions. Deletes from the list of those actions the collection of payments to the low-level radioactive waste fund and general revenue as provided by Section 402.2721.

SECTION 16. Amends Section 401.301(d), Health and Safety Code, to make conforming changes.

SECTION 17. Amends Section 401.303(g), Health and Safety Code, to make a conforming change.

SECTION 18. Amends Section 401.305, Health and Safety Code, as follows:

Sec. 401.305. New heading: RADIATION AND PERPETUAL CARE ACCOUNT. (a) Provides that the radiation and perpetual care account is an account in the general revenue fund, rather than the state treasury.

(b)-(e) and (g) Make conforming changes.

SECTION 19. Amends Section 401.342(b), Health and Safety Code, to make a conforming change.

SECTION 20. Amends Section 401.343(a), Health and Safety Code, to make a conforming change.

SECTION 21. Amends Section 403.001(a), Health and Safety Code, to make nonsubstantive changes. Requires one of the voting members of the compact commission to be a legal resident of the host county, rather than of Hudspeth County, Texas.

SECTION 22. Amends Section 5.013(a), Water Code, to make a conforming change.

SECTION 23. Amends Section 7.033, Water Code, to make a conforming change.

SECTION 24. Repealer: Sections 401.153 (Processing of Out-of-State Low-Level Radioactive Waste) and 401.306 (Low-Level Radioactive Waste Fund), Health and Safety Code, Chapter 402 (Low-Level Radioactive Waste Disposal Authority), Health and Safety Code, and Section 51.0511, Natural Resources Code (Sale or Lease of Land for Radioactive Waste Disposal Site).

SECTION 25. Provides that this Act prevails to the extent of a conflict between this Act and any other Act of the 78th Legislature, Regular Session, 2003, dealing with the organization, powers, and duties of TDH, particularly with regard to certain subjects.

SECTION 26. Effective date: upon passage or September 1, 2003.