

By: West, Chisum, Smith of Harris

H.B. No. 1567

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the disposal of low-level radioactive waste;
3 authorizing the exercise of the power of eminent domain.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 401.003(11), Health and Safety Code, is
6 amended to read as follows:

7 (11) "Perpetual care account" [~~"Fund"~~] means the
8 radiation and perpetual care account [~~fund~~].

9 SECTION 2. Sections 401.052(b), (c), (d), (e), and (f),
10 Health and Safety Code, are amended to read as follows:

11 (b) Rules adopted under this section for low-level
12 radioactive waste must [~~shall~~]:

13 (1) to the extent practicable, be compatible with
14 United States Department of Transportation and United States
15 Nuclear Regulatory Commission regulations relating to the
16 transportation of low-level radioactive waste;

17 (2) require each shipper and transporter of low-level
18 radioactive waste to adopt an emergency plan approved by the
19 department for responding to transportation accidents;

20 (3) require the notification and reporting of
21 accidents to the department and to local emergency planning
22 committees in the county where the accident occurs;

23 (4) require each shipper to adopt a quality control
24 program approved by the department to verify that shipping

1 containers are suitable for shipment to a licensed disposal
2 facility; ~~and~~

3 (5) assess a fee on shippers for shipments to a Texas
4 low-level radioactive waste disposal facility of low-level
5 radioactive waste originating in Texas or out-of-state; and

6 (6) require a shipper to carry liability insurance in
7 an amount the board determines is sufficient to cover damages
8 likely to be caused by a shipping accident.

9 (c) In adopting ~~promulgating~~ rules under this section,
10 the board shall consult with the advisory board ~~and the~~
11 ~~commission~~.

12 (d)(1) Fees assessed under the rules adopted under
13 Subsection (b)(5) ~~[this section shall]~~:

14 (A) may not exceed \$10 per cubic foot of shipped
15 low-level radioactive waste;

16 (B) shall be collected by the compact waste
17 disposal facility license holder under Subchapter F ~~[authority]~~ and
18 remitted to the department for deposit ~~[deposited]~~ to the credit of
19 the ~~[radiation and]~~ perpetual care account ~~[fund]~~; and

20 (C) may be used only ~~[exclusively]~~ by the
21 department for emergency planning for and response to
22 transportation accidents involving low-level radioactive waste.

23 (2) Fee assessments under the rules adopted under
24 Subsection (b)(5) ~~[this section]~~ shall be suspended when the amount
25 of fees collected reaches \$500,000, except that if the balance of
26 fees collected is reduced to \$350,000 or less, the assessments
27 shall be reinstated to bring the balance of fees collected to

1 \$500,000.

2 (e) Money expended from the [~~radiation and~~] perpetual care
3 account [~~fund~~] to respond to accidents involving low-level
4 radioactive waste must be reimbursed to the [~~radiation and~~]
5 perpetual care account [~~fund~~] by the responsible shipper or
6 transporter according to rules adopted by the board.

7 (f) In this section, "shipper" [~~+~~

8 [~~(1) "Shipper"~~] means a person who generates
9 low-level radioactive waste and ships or arranges with others to
10 ship the waste to a disposal site.

11 [~~(2) "Authority" means the Texas Low-Level~~
12 ~~Radioactive Waste Disposal Authority.~~]

13 SECTION 3. Subchapter C, Chapter 401, Health and Safety
14 Code, is amended by adding Section 401.071 to read as follows:

15 Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO
16 LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

17 (1) conduct, request, and participate in studies,
18 investigations, and research relating to selection, preparation,
19 construction, operation, maintenance, decommissioning, closing,
20 and financing of disposal sites for and disposal of low-level
21 radioactive waste; and

22 (2) advise, consult, and cooperate with the federal
23 government, the state, interstate agencies, local governmental
24 entities in this state, and private entities on matters involving
25 the disposal of low-level radioactive waste.

26 (b) In carrying out its duties under this section the
27 commission may:

1 (1) apply for, receive, accept, and administer gifts,
2 grants, and other funds available from any source; and

3 (2) contract with the federal government, the state,
4 interstate agencies, local governmental agencies, and private
5 entities.

6 SECTION 4. Section 401.104(b), Health and Safety Code, is
7 amended to read as follows:

8 (b) Except as provided by Subsection (e), the commission by
9 rule shall provide for licensing for the disposal of radioactive
10 material except for the disposal of by-product material defined by
11 Section 401.003(3)(B) and the disposal of low-level radioactive
12 waste under Subchapter F. The department by rule shall provide for
13 licensing the disposal of by-product material defined by Section
14 401.003(3)(B).

15 SECTION 5. Section 401.109, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 401.109. SECURITY. (a) The department or commission
18 may require a holder of a license issued by the agency to provide
19 security acceptable to the agency to assure performance of the
20 license holder's obligations under this chapter. The department or
21 commission shall deposit security provided under this section to
22 the credit of the perpetual care account.

23 (b) The department or commission shall require a holder of a
24 license that authorizes the disposal of low-level radioactive waste
25 as provided by Subchapter F to provide security acceptable to the
26 agency to assure performance of the license holder's obligations
27 under this chapter.

1 (c) The amount and type of security required shall be
2 determined under the agency's rules in accordance with criteria
3 that include:

4 (1) the need for and scope of decontamination,
5 decommissioning, reclamation, or disposal activity reasonably
6 required to protect the public health and safety and the
7 environment;

8 (2) reasonable estimates of the cost of
9 decontamination, decommissioning, reclamation, and disposal as
10 provided by Section 401.303; and

11 (3) the cost of perpetual maintenance and
12 surveillance, if any.

13 (d) [~~(c)~~] In this section "security" includes:

14 (1) a cash deposit;

15 (2) a surety bond;

16 (3) a certificate of deposit;

17 (4) an irrevocable letter of credit;

18 (5) a deposit of government securities;

19 (6) an insurance policy; and

20 (7) [~~(6)~~] other security acceptable to the agency.

21 SECTION 6. Section 401.152(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) The agency shall use the security provided by the
24 license holder to pay the costs of actions that are taken or that
25 are to be taken under this section. The agency shall send to the
26 comptroller a copy of its order together with necessary written
27 requests authorizing the comptroller to:

- 1 (1) enforce security supplied by the license holder;
2 (2) convert an amount of security into cash, as
3 necessary; and
4 (3) disburse from the security in the perpetual care
5 account [~~fund~~] the amount necessary to pay the costs.

6 SECTION 7. Subchapter F, Chapter 401, Health and Safety
7 Code, is amended to read as follows:

8 SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL

9 RADIOACTIVE WASTE DISPOSAL

10 Sec. 401.2005. DEFINITIONS. In this subchapter:

11 (1) "Compact waste" means low-level radioactive waste
12 that:

13 (A) is generated in a host state or a party state;

14 or

15 (B) is not generated in a host state or a party
16 state but has been approved for importation to this state by the
17 compact commission under Section 3.05 of the compact established
18 under Section 403.006.

19 (2) "Compact waste disposal facility" means the
20 low-level radioactive waste disposal facility licensed by the
21 department under this subchapter for the disposal of compact waste.

22 (3) "Disposal facility site" means the tract of land
23 on which is located the compact waste disposal facility and the
24 federal facility waste disposal facility, if applicable. The term
25 includes the immediate area surrounding the facility or facilities.

26 (4) "Federal facility waste" means low-level
27 radioactive waste that is the responsibility of the federal

1 government under the Low-Level Radioactive Waste Policy Act, as
2 amended by the Low-Level Radioactive Waste Policy Amendments Act of
3 1985 (42 U.S.C. Sections 2021b-2021j).

4 (5) "Federal facility waste disposal facility" means a
5 facility for the disposal of federal facility waste licensed under
6 Section 401.216.

7 (6) "Host state" has the meaning assigned by Section
8 2.01 of the compact established under Section 403.006.

9 (7) "Party state" has the meaning assigned by Section
10 2.01 of the compact established under Section 403.006.

11 Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE
12 DISPOSAL. The department [~~commission~~] shall directly regulate the
13 disposal of low-level radioactive waste in accordance with this
14 subchapter. The person making the disposal shall comply with this
15 subchapter and department [~~commission~~] rules.

16 Sec. 401.202. LICENSING AUTHORITY. (a) The [~~commission~~
17 ~~or~~] department may [~~, within its respective jurisdiction, shall~~]
18 grant, deny, renew, revoke, suspend, or withdraw licenses for the
19 disposal of low-level radioactive waste from other persons and for
20 the processing of that waste.

21 (b) The department shall receive applications for and may
22 issue not more than one license for a single compact waste disposal
23 facility. The department may issue the license only for a facility
24 that meets:

25 (1) requirements for licensing provided by this
26 subchapter and by department rules; and

27 (2) requirements for disposal adopted by the

1 department that meet federal requirements for disposal.

2 (c) Except as provided by Section 401.216, the department
3 shall provide that the compact waste disposal facility license
4 authorizes only the disposal of compact waste.

5 ~~[Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. A~~
6 ~~low-level radioactive waste disposal license may be issued only to~~
7 ~~a public entity specifically authorized by law for low-level~~
8 ~~radioactive waste disposal.]~~

9 Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application
10 for a compact waste disposal facility license [~~to dispose of~~
11 ~~low-level radioactive waste from other persons]~~ may not be
12 considered unless the applicant has acquired the title to and any
13 interest in land and buildings as required by department
14 [~~commission~~] rule.

15 (b) If an applicant for a compact waste disposal license is
16 unsuccessful in acquiring a mineral right that the rules adopted
17 under Subsection (a) require the applicant to acquire, the
18 department may allow the applicant, to the extent permissible under
19 federal law, to enter into a surface use agreement that restricts
20 mineral access, including slant drilling and subsurface mining, to
21 the extent necessary to prevent intrusion into the disposal
22 facility site.

23 (c) If an applicant cannot reach a surface use agreement
24 described by Subsection (b) with a private landowner, the attorney
25 general shall, on request of the department, institute condemnation
26 proceedings as provided under Chapter 21, Property Code, to acquire
27 the mineral right.

1 Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO
2 DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste
3 disposal facility license holder [~~A person who is licensed to~~
4 ~~dispose of low-level radioactive waste from other persons~~] shall:

5 (1) arrange for and pay the costs of management,
6 control, stabilization, and disposal of low-level radioactive
7 waste and the decommissioning of the licensed activity;

8 (2) convey to the state when the license is issued all
9 required right, title, and interest in land and buildings acquired
10 under department [~~commission~~] rules adopted under Section 401.204,
11 together with requisite rights of access to that property; and

12 (3) formally acknowledge before termination of the
13 license the conveyance to the state of the right, title, and
14 interest in low-level radioactive waste located on the property
15 conveyed.

16 (b) The compact waste disposal facility license holder, if
17 licensed under Section 401.216 to dispose of federal facility
18 waste, shall:

19 (1) arrange for and pay the costs of management,
20 control, stabilization, and disposal of federal facility waste and
21 the decommissioning of the licensed federal facility waste disposal
22 activity;

23 (2) on decommissioning of the licensed federal
24 facility waste disposal activity, convey to the federal government,
25 as provided by the federal Nuclear Waste Policy Act of 1982,
26 Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all
27 required right, title, and interest in land and buildings acquired

1 under department rules under Section 401.204, together with
2 requisite rights of access to that property; and

3 (3) formally acknowledge before termination of the
4 license the conveyance to the federal government of the right,
5 title, and interest in radioactive waste located on the property
6 conveyed.

7 Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste
8 disposal facility license holder shall convey to the state at no
9 cost to the state title to the compact waste delivered to the
10 disposal facility for disposal at the time the waste is accepted at
11 the site. Acceptance occurs when the acceptance criteria specified
12 in the license have been satisfied. This section does not apply to
13 federal facility waste accepted at a federal facility waste
14 disposal facility.

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

19 Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste
20 disposal facility license holder [~~of a license to dispose of~~
21 ~~low-level radioactive waste from other persons~~] shall reimburse the
22 department [~~commission~~] for the salary and other expenses of two or
23 more [~~a~~] resident inspectors [~~inspector~~] employed by the department
24 [~~commission~~].

25 (b) The department [~~commission~~] may require that the
26 compact waste disposal facility license holder provide facilities
27 at the [~~a~~] disposal site for the resident inspectors [~~inspector~~].

1 Sec. 401.207. OUT-OF-STATE WASTE. The compact waste
2 disposal facility [A] license holder may not accept low-level
3 radioactive waste generated in another state for [~~processing or~~]
4 disposal under a license issued by the department [~~commission~~]
5 unless the waste [~~is~~]:

6 (1) is accepted under a compact to which the state is a
7 contracting party; or

8 (2) is [~~from a state having an operating low-level~~
9 ~~radioactive waste disposal site at which that state is willing to~~
10 ~~accept low-level radioactive waste generated in this state; or~~

11 [~~(3)~~] generated from manufactured sources or devices
12 originating in this state.

13 Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL
14 RADIOACTIVE WASTE DISPOSAL SITES. (a) The department [~~commission~~]
15 may acquire the fee simple title in land, affected mineral rights,
16 and buildings at which low-level radioactive waste can be or is
17 being disposed of in a manner consistent with public health and
18 safety and the environment.

19 (b) Property acquired under this section may be used only
20 for disposing of low-level radioactive waste until the department
21 [~~commission~~] determines that another use would not endanger the
22 health, safety, or general welfare of the public or the
23 environment.

24 (c) The department [~~commission~~] may lease property acquired
25 under this section for operating a disposal site [~~sites~~] for
26 low-level radioactive waste.

27 (d) The right, title, and interest in low-level radioactive

1 waste accepted for disposal at property and facilities acquired
2 under this section and any other interest acquired under this
3 chapter are the property of the department [~~commission~~], acting on
4 behalf of the state, and shall be administered and controlled by the
5 department [~~commission~~] in the name of the state.

6 (e) A right, title, or interest acquired under this chapter
7 does not vest in any fund created by the Texas Constitution.

8 Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level
9 radioactive waste and land and buildings transferred to the state
10 or to the federal government under this chapter shall be
11 transferred to the state or to the federal government without cost,
12 other than administrative and legal costs incurred in making the
13 transfer.

14 Sec. 401.211. LIABILITY. (a) The transfer [~~to the state~~]
15 of the title to low-level radioactive waste and land and buildings
16 to the state or to the federal government does not relieve a license
17 holder of liability for any act or omission [~~fraudulent or~~
18 ~~negligent acts~~] performed before the transfer or while the
19 low-level radioactive waste or land and buildings are in the
20 possession and control of the license holder.

21 (b) The acceptance, storage, or disposal of federal
22 facility waste by the compact waste disposal facility license
23 holder at a federal facility waste disposal facility does not
24 create any liability under state law on the part of the state, or on
25 the part of any officer or agency of the state, for damages,
26 removal, or remedial action with respect to the land, the facility,
27 or the waste accepted, stored, or disposed of.

1 (c) The compact waste disposal facility license must
2 require the license holder to indemnify the state for any liability
3 imposed on the state under state or federal law, as required by the
4 department for the disposal of federal facility waste.

5 Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY
6 MEASURES. The department [~~commission~~] may undertake monitoring,
7 maintenance, and emergency measures that are necessary to protect
8 the public health and safety and the environment in connection with
9 low-level radioactive waste and property for which it has assumed
10 custody.

11 Sec. 401.213. INTERSTATE COMPACTS. The department
12 [~~commission~~] shall cooperate with and encourage the use of
13 interstate compacts, including the Southern States Energy Board, to
14 develop regional sites that divide among the states the disposal
15 burden of low-level radioactive waste generated in the region.

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

23 Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE.
24 Subject to limitations provided by Sections 401.207 and 401.248,
25 the compact waste disposal facility shall accept for disposal all
26 compact waste that is presented to it and that is properly processed
27 and packaged.

1 Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The
2 department may license the compact waste disposal facility license
3 holder to dispose of federal facility waste. The department may
4 license federal facility waste disposal only at a separate and
5 distinct facility that is operated exclusively for the disposal of
6 federal facility waste and that is adjacent to the compact waste
7 disposal facility.

8 (b) The department may restrict the amount and type of
9 federal facility waste the compact waste disposal facility license
10 holder may accept at the separate adjacent facility. The
11 restrictions must be based on the performance objective established
12 by 10 C.F.R. Section 61.41.

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

15 (d) The compact waste disposal facility license holder may
16 not accept federal facility waste at a federal facility waste
17 disposal facility until the license holder begins accepting compact
18 waste at the compact waste disposal facility.

19 Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The
20 department may not issue a license for a compact waste disposal
21 facility or license the operation of a federal facility waste
22 disposal facility if the disposal facility site is located:

23 (1) in a county any part of which is located 62 miles
24 or less from an international boundary;

25 (2) in a county in which the average annual rainfall is
26 greater than 20 inches;

27 (3) in a county that adjoins river segment 2309, 2310,

1 or 2311 as identified by the commission in the Texas Surface Water
2 Quality Standards, 30 T.A.C. Section 307.10(3);

3 (4) in a 100-year flood plain; or

4 (5) less than 20 miles upstream of or up-drainage from
5 the maximum elevation of the surface of a reservoir project that:

6 (A) has been constructed or is under construction
7 by the United States Bureau of Reclamation or the United States Army
8 Corps of Engineers; or

9 (B) has been approved for construction by the
10 Texas Water Development Board as part of the state water plan under
11 Subchapter C, Chapter 16, Water Code.

12 Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this
13 section, "Class A low-level radioactive waste," "Class B low-level
14 radioactive waste," and "Class C low-level radioactive waste" have
15 the meanings assigned by department rule.

16 (b) The compact waste disposal facility license holder
17 shall dispose of Class B low-level radioactive waste and Class C
18 low-level radioactive waste:

19 (1) within a reinforced concrete container and within
20 a reinforced concrete barrier or within containment structures made
21 of materials technologically equivalent or superior to reinforced
22 concrete;

23 (2) in above-grade vaults with internal access
24 designed to isolate the waste from the environment, from which the
25 waste is easily retrievable; and

26 (3) in a manner that includes:

27 (A) individual monitoring of each waste

1 structure or building;

2 (B) monitoring of the ground beneath the disposal
3 facility and the perimeter of the facility for leakage; and

4 (C) active inspection and preventive
5 maintenance.

6 (c) The department by rule may require a compact waste
7 disposal facility license holder to dispose of certain Class A
8 low-level radioactive wastes that present a hazard because of their
9 high radiation levels in the manner required for Class B low-level
10 radioactive waste and Class C low-level radioactive waste under
11 Subsection (b). To the extent practicable, rules adopted under
12 this subsection shall be consistent with federal rules regarding
13 classification of low-level radioactive waste under 10 C.F.R. Part
14 61.

15 Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL
16 RADIOACTIVE WASTE. (a) As a condition for obtaining a compact
17 waste disposal facility license, an applicant must submit to the
18 department or its designee evidence relating to the reasonableness
19 of any technique for managing low-level radioactive waste to be
20 practiced at the proposed disposal facility or facilities.

21 (b) Before determining the techniques to be used for
22 managing low-level radioactive waste, an applicant shall study
23 alternative techniques, including:

24 (1) waste processing and reduction at the site of
25 waste generation and at the disposal facility; and

26 (2) the use of aboveground isolation facilities.

27 Sec. 401.220. DESIGN OF FACILITY. The design of a disposal

1 facility should incorporate, to the extent practicable, safeguards
2 against hazards resulting from local meteorological conditions,
3 including phenomena such as hurricanes, tornados, earthquakes,
4 earth tremors, violent storms, and susceptibility to flooding.

5 Sec. 401.221. MIXED WASTE. (a) In this section, "mixed
6 waste" means a combination of hazardous waste as defined by Chapter
7 361 and low-level radioactive waste and includes federal mixed
8 waste.

9 (b) The compact waste disposal facility license holder in
10 accepting mixed waste at the compact waste disposal facility or a
11 federal facility waste disposal facility shall comply with Chapter
12 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C.
13 Section 6901 et seq.), as amended, and this chapter.

14 Sec. 401.222. TERM OF LICENSE. The compact waste disposal
15 facility license issued under this subchapter expires on the 15th
16 anniversary of its date of issuance and may be renewed for one or
17 more terms of 10 years.

18 Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The department
19 and local public health officials shall develop a health
20 surveillance survey for the population located in the vicinity of
21 the disposal facility site.

22 Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The
23 department shall adopt rules relating to the packaging of
24 radioactive waste.

25 Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a)
26 On arrival of a shipment of low-level radioactive waste at the
27 compact waste disposal facility or a federal facility waste

1 disposal facility, the compact waste disposal facility license
2 holder must determine that the waste complies with all laws, rules,
3 and standards relating to processing and packaging of low-level
4 radioactive waste before the waste is accepted for disposal at the
5 facility.

6 (b) A person making a shipment of low-level radioactive
7 waste that is in excess of 75 cubic feet shall give the compact
8 waste disposal facility license holder written notice of the
9 shipment at least 72 hours before shipment to the compact waste
10 disposal facility or a federal facility waste disposal facility
11 begins. The written notice must contain information required by
12 the department.

13 Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL
14 RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not
15 properly processed or packaged arrives at the compact waste
16 disposal facility or a federal facility waste disposal facility,
17 the compact waste disposal facility license holder shall properly
18 process and package the waste for disposal and charge the person
19 making the shipment a fee to have the low-level radioactive waste
20 properly processed and packaged.

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

1 Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE
2 DISPOSAL FACILITY LICENSE. (a) In selecting an application for the
3 compact waste disposal facility license, the department shall:

4 (1) issue notice of the opportunity to submit an
5 application to dispose of low-level radioactive waste in accordance
6 with Section 401.228;

7 (2) review all applications received under
8 Subdivision (1) for administrative completeness;

9 (3) evaluate all administratively complete
10 applications in accordance with the evaluation criteria
11 established by Sections 401.233-401.236 and shall select the
12 application that has the highest comparative merit in accordance
13 with Section 401.232; and

14 (4) review the selected application under Subdivision
15 (3) for technical completeness and issue a draft license in
16 accordance with Sections 401.237 and 401.238.

17 (b) If the selected application is rejected or denied by the
18 department, the department may select the next highest comparative
19 merit application and proceed in accordance with Subsection (a)(4).

20 Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later
21 than January 1, 2004, the department shall give to the secretary of
22 state for publication in the Texas Register notice that:

23 (1) the department will accept applications for a
24 30-day period, beginning 180 days after the date of the Texas
25 Register notice, for the siting, construction, and operation of a
26 facility or facilities for disposal of low-level radioactive waste;

27 (2) applications must comply with Chapter 401, Health

1 and Safety Code, the rules of the department, and any other
2 applicable requirements in the department's discretion;

3 (3) applications must include a nonrefundable
4 \$500,000 application processing fee;

5 (4) applications received within the 30-day
6 application receipt period will be evaluated by the department for
7 administrative completeness;

8 (5) applications deemed administratively complete
9 will be evaluated by the department in accordance with the
10 statutory evaluation criteria under Sections 401.233-401.236; and

11 (6) based on the department's evaluation, one
12 application will be selected to be processed by the department.

13 Sec. 401.229. APPLICATION PROCESSING FEE. An application
14 for a compact waste disposal facility license must include payment
15 to the department of an application processing fee of \$500,000. The
16 department may not review an application for administrative
17 completeness until the department receives the application
18 processing fee. The application processing fee is nonrefundable.

19 Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day
20 period beginning 180 days after the date notice is published under
21 Section 401.228, the department shall accept applications for a
22 compact waste disposal facility license.

23 (b) Not later than the 45th day after the date an
24 application is received, the department shall issue an
25 administrative notice of deficiency to each applicant whose
26 application is timely submitted but is determined by the department
27 to be administratively incomplete.

1 (c) The department shall provide an applicant for whom an
2 administrative notice of deficiency is issued not more than three
3 30-day opportunities to cure the noted deficiencies in the
4 application.

5 (d) The department shall reject any application that, after
6 the period for correcting deficiencies has expired, is not
7 administratively complete.

8 Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The
9 department shall consider as administratively complete an
10 application for which the department has received the portions of
11 the application necessary to allow the department to review the
12 technical merits of the application, including:

13 (1) the identity and qualifications of the applicant;

14 (2) a description of the proposed disposal facility or
15 facilities and disposal facility site;

16 (3) a description of the character of the proposed
17 activities and the types and quantities of waste to be managed at
18 the disposal facility or facilities;

19 (4) a description of the proposed schedules for
20 construction, receipt of waste, and closure;

21 (5) a description of the financial assurance mechanism
22 to be used;

23 (6) a description of the design features of the
24 facility or facilities, along with a description of the methods of
25 construction and operation of the facility or facilities;

26 (7) a characterization of the area and disposal
27 facility site characteristics, including ecology, geology, soils,

1 hydrology, natural radiation background, climatology, meteorology,
2 demography, and current land uses;

3 (8) a description of the safety programs to be used at
4 the proposed facility or facilities;

5 (9) a copy of the warranty deed or other conveyance
6 showing required right, title, and interest in the land and
7 buildings on which the facility or facilities are proposed to be
8 located is owned in fee by the applicant as required by Section
9 401.204;

10 (10) an application processing fee in the amount
11 prescribed by Section 401.229 and proof of additional funds
12 sufficient to cover any further costs of processing the application
13 as estimated by the department; and

14 (11) a copy of a resolution of support of the proposed
15 facility or facilities from the commissioners court of the county
16 in which the facility or facilities are proposed to be located.

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

22 (b) The department shall conduct at least one public meeting
23 in the county or counties where a compact waste disposal facility or
24 federal facility waste disposal facility is to be located to
25 receive public comments on the administratively complete
26 applications. The department shall set the time and place of the
27 meetings as soon as practicable after the close of the period for

1 administrative review of the applications.

2 (c) The department may issue a request for further
3 information to each applicant whose application is determined by
4 the department to be insufficient for the purposes of the
5 department's evaluation.

6 (d) The department shall provide an applicant for whom a
7 request for further information is issued two 30-day opportunities
8 to adequately respond in the discretion of the department.

9 (e) The department shall use the written evaluations and
10 application materials to evaluate each application according to the
11 statutory criteria established by Sections 401.233-401.236. The
12 department shall evaluate each application for each statutory
13 criterion for purposes of comparing the relative merit of the
14 applications, giving:

15 (1) equal weight to each criterion within a tier of
16 criteria; and

17 (2) the greatest weight to tier 1 criteria, greater
18 weight to tier 2 criteria than to tier 3 criteria, and the least
19 weight to tier 4 criteria.

20 (f) Before publication of the notice of the department's
21 intention to accept applications under Section 401.228, the
22 department by rule may adopt criteria in addition to the criteria
23 under Sections 401.233-401.236 by which the department may evaluate
24 applications. The criteria must be consistent with those sections.

25 (g) Not later than the 180th day after it receives the last
26 timely filed application, the department, based on the written
27 evaluations and application materials, shall select the

1 application that has the highest comparative merit.

2 Sec. 401.233. TIER 1 CRITERIA. (a) The department shall
3 consider as tier 1 criteria:

4 (1) the natural characteristics of the disposal
5 facility site for a proposed disposal facility or facilities;

6 (2) the adequacy of the proposed facility or
7 facilities and activities to safely isolate, shield, and contain
8 low-level radioactive waste from mankind and mankind's
9 environment; and

10 (3) the adequacy of financial assurance related to the
11 proposed activities.

12 (b) Natural characteristics of the disposal facility site
13 include:

14 (1) the suitability of the site for the proposed
15 activities, including the site's:

16 (A) geological characteristics;

17 (B) topography, including features relating to
18 erosion;

19 (C) surface and underground hydrology;

20 (D) meteorological factors; and

21 (E) natural hazards;

22 (2) the compatibility of disposal activities with any
23 uses of land near the site that could affect the natural performance
24 of the site or that could affect monitoring of the disposal facility
25 or facilities and disposal facility site;

26 (3) the adequacy of plans for the collection of
27 prelicense monitoring data and background monitoring plans for the

1 disposal facility site, including analysis of the ambient
2 conditions of the site and established trends of the site's natural
3 parameters, including:

4 (A) natural background radioactivity levels;

5 (B) radon gas levels;

6 (C) air particulate levels;

7 (D) soil characteristics, including chemical
8 characteristics;

9 (E) surface water and groundwater
10 characteristics; and

11 (F) flora and fauna at the site;

12 (4) the possible effects of disposal activities on
13 flora and fauna at or near the site; and

14 (5) the ease of access to the site.

15 (c) Adequacy of the proposed disposal facility or
16 facilities and activities includes:

17 (1) the capability of the proposed facility or
18 facilities and activities to isolate, shield, and contain low-level
19 radioactive waste in conformity with federal standards;

20 (2) acceptable operational safety; and

21 (3) acceptable long-term safety as demonstrated by
22 analysis or study.

23 (d) Financial assurance criteria include:

24 (1) adequacy of the applicant's financial
25 qualifications to:

26 (A) conduct the licensed activities as proposed,
27 including:

1 (i) any required decontamination,
2 decommissioning, reclamation, or disposal; and

3 (ii) control and maintenance of the
4 disposal facility site and facility or facilities after the
5 cessation of active operations; and

6 (B) address any unanticipated extraordinary
7 events that would pose a risk to public health and safety and the
8 environment and that may occur at the disposal facility site after
9 decommissioning and closure of the disposal facility or facilities;

10 (2) the adequacy of the applicant's financial
11 assurance in an amount and type acceptable to the department and
12 adequate to cover potential injury to any property or person;

13 (3) the adequacy of the applicant's financial
14 security, as required by department rules; and

15 (4) the degree of certainty that the applicant will be
16 able to maintain adequate financial security.

17 Sec. 401.234. TIER 2 CRITERIA. The department shall
18 consider as tier 2 criteria:

19 (1) the suitability of facilities at the site that are
20 associated with proposed activities and the adequacy of their
21 engineering and design; and

22 (2) the suitability of the proposed disposal facility
23 or facilities for the chemical, radiological, and biological
24 characteristics of the low-level radioactive waste as classified
25 under the system established under Section 401.053.

26 Sec. 401.235. TIER 3 CRITERIA. The department shall
27 consider as tier 3 criteria the applicant's:

1 (1) technical qualifications to receive, store,
2 process, and dispose of low-level radioactive waste;

3 (2) experience in management and disposal of low-level
4 radioactive waste and other radioactive materials;

5 (3) previous operating practices in this state and
6 elsewhere, including the practices of a parent, subsidiary, or
7 affiliated entity of the applicant, related to radioactive
8 materials;

9 (4) record of compliance with environmental statutes,
10 rules, and licenses in this state and in any other jurisdiction,
11 including the records of a parent or subsidiary of the applicant,
12 subject to Section 401.243;

13 (5) training programs proposed for its employees whose
14 duties relate to the proposed disposal facility site and
15 activities;

16 (6) monitoring, recordkeeping, and reporting plans;

17 (7) low-level radioactive waste spill detection and
18 cleanup plans for the proposed disposal facility site and
19 activities;

20 (8) decommissioning and postclosure plans;

21 (9) security plans;

22 (10) monitoring and protection plans for workers;

23 (11) emergency plans;

24 (12) plans for background monitoring during the
25 license period, including analysis of the ambient conditions of the
26 disposal facility site and analysis of established trends of the
27 disposal facility site's natural parameters, including:

- 1 (A) natural background radioactivity levels;
2 (B) radon gas levels;
3 (C) air particulate levels;
4 (D) soil characteristics, including chemical
5 characteristics;
6 (E) surface water and groundwater
7 characteristics; and
8 (F) flora and fauna at the site; and
9 (13) ability to adequately manage the proposed
10 disposal facility or facilities and activities for the term of the
11 license.

12 Sec. 401.236. TIER 4 CRITERIA. The department shall
13 consider as tier 4 criteria:

14 (1) the compatibility of uses of land near the
15 proposed disposal facility site that could be affected by the
16 construction and operation of the disposal facility or facilities;
17 and

18 (2) possible socioeconomic effects on communities in
19 the host county of:

20 (A) the proposed disposal facility or
21 facilities;

22 (B) the operation of the proposed disposal
23 facility or facilities; and

24 (C) related transportation of low-level
25 radioactive waste to the disposal facility or facilities.

26 Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the
27 department's selection of the application that has the highest

1 comparative merit in accordance with Section 401.232, the
2 department shall begin a technical review of the selected
3 application.

4 (b) The department shall complete the technical review and
5 prepare a draft license not later than the 15th month after the
6 month in which the technical review begins.

7 (c) The department shall give priority to the review of the
8 selected application over all other radioactive materials and waste
9 licensing and registration matters pending before the department,
10 except those the commissioner determines necessary to avert or
11 address a health and safety emergency.

12 Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR
13 HEARING. On completion of the technical review of the selected
14 application and preparation of the draft license, the department
15 shall publish, at the applicant's expense, notice of the draft
16 license and specify the requirements for requesting a contested
17 case hearing by a person affected. The notice shall include a
18 statement that the draft license is available for review on the
19 department's website and that the draft license and the application
20 materials are available for review at the offices of the department
21 and in the county or counties in which the proposed disposal
22 facility site is located. Notice shall be published in the Texas
23 Register and in a newspaper of general circulation in each county in
24 which the proposed disposal facility site is located. The
25 applicant shall mail the notice by certified mail to each person who
26 owns land adjacent to the proposed disposal facility site.

27 Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION.

1 (a) An administrative law judge of the State Office of
2 Administrative Hearings shall conduct a contested case hearing on
3 the application and draft license if the applicant or a person
4 affected requests a hearing.

5 (b) The administrative law judge may not admit as a party to
6 the contested case hearing a person other than the applicant, the
7 commissioner, or a person affected.

8 (c) The administrative law judge shall issue a proposal for
9 decision not later than the first anniversary of the publication
10 date of the notice of draft license published under Section
11 401.238.

12 (d) The department shall take final action on the proposal
13 for decision of the administrative law judge not later than the 90th
14 day after the date the proposal is issued.

15 Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any
16 other law, a person affected by an action of the commissioner or the
17 department under this subchapter may file a petition for judicial
18 review of the action only after the department takes final action on
19 a license application under Section 401.239(d). A petition must be
20 filed not later than the 30th day after the date of the final
21 action.

22 (b) In its review of an action under this subchapter, a
23 court may not substitute its judgment for the judgment of the
24 commissioner or the department on the weight of the evidence the
25 commissioner or department considered, but:

26 (1) may affirm the action in whole or in part; and

27 (2) shall reverse or remand the case for further

1 proceedings if substantial rights of the petitioner have been
2 prejudiced because the administrative findings, inferences,
3 conclusions, or decisions:

4 (A) are in violation of a constitutional or
5 statutory provision;

6 (B) are in excess of the department's statutory
7 authority;

8 (C) are made through unlawful procedure;

9 (D) are affected by other error of law;

10 (E) are not reasonably supported by substantial
11 evidence considering the reliable and probative evidence in the
12 record as a whole; or

13 (F) are arbitrary or capricious or characterized
14 by abuse of discretion or clearly unwarranted exercise of
15 discretion.

16 Sec. 401.241. SECURITY. (a) In determining the amount of
17 security required of a compact waste disposal facility license
18 holder under Section 401.109, the department shall also consider
19 the need for financial security to address and prevent unplanned
20 events that pose a risk to public health and safety and that may
21 occur after the decommissioning and closure of the compact waste
22 disposal facility or a federal facility waste disposal facility
23 licensed under Section 401.216.

24 (b) The amount of security required of a license holder
25 under this section may not be less than \$20 million. The department
26 shall use interest earned on the security to offset any other
27 financial obligations incurred by the license holder to the

1 department.

2 (c) In addition to the forms of security listed under
3 Section 401.109(c), the department may require a license holder
4 under this subchapter to provide security in the form of liability
5 insurance.

6 Sec. 401.242. ACCEPTANCE OF WASTE. (a) The department
7 shall require the compact waste disposal facility license holder to
8 follow, as closely as is possible, the schedule submitted to the
9 department under Section 401.231. If the compact waste disposal
10 facility license holder holds a permit to process, store, or
11 dispose of hazardous waste under Chapter 361, the license holder
12 may accept hazardous waste according to the schedule under Section
13 401.231 before the compact waste disposal facility begins
14 operation.

15 (b) If the department finds that the compact waste disposal
16 facility license holder has violated this chapter or any department
17 rule in a manner that may endanger public health or safety, the
18 license holder may not accept low-level radioactive waste at either
19 the compact waste disposal facility or the federal facility waste
20 disposal facility until the department finds that the license
21 holder is in compliance with the statute or rule found to be
22 violated.

23 Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for
24 a hearing, the department shall deny an application for a license
25 under this subchapter or an amendment or renewal for a license under
26 this subchapter if the applicant's compliance history reveals a
27 recurring pattern of conduct that demonstrates a consistent

1 disregard for the regulatory process through a history of
2 violations of this chapter or the department's rules under this
3 chapter.

4 SECTION 8. Section 402.252, Health and Safety Code, is
5 transferred to Subchapter F, Chapter 401, Health and Safety Code,
6 renumbered as Section 401.244, and amended to read as follows:

7 Sec. 401.244 [~~402.252~~]. HOST COUNTY [~~LOCAL~~] PUBLIC
8 PROJECTS. (a) The compact waste disposal facility license holder
9 each quarter [~~board~~] shall [~~quarterly~~] transfer [~~money in the~~
10 ~~low-level radioactive waste fund generated by planning and~~
11 ~~implementation fee surcharges under Sections 402.2721(e) and (f),~~
12 ~~and that portion of waste disposal fees identifiable as adopted for~~
13 ~~the purposes of Sections 402.273(a)(3) and (b)] to the
14 commissioners court of the host county 7.5 percent of the gross
15 receipts from:~~

16 (1) compact waste received at the compact waste
17 disposal facility; and

18 (2) any federal facility waste received at a federal
19 facility waste disposal facility licensed under Section 401.216.

20 (b) The commissioners court of the host county may:

21 (1) spend the money for [~~local~~] public projects in the
22 host county; or

23 (2) disburse the money to other local entities or to
24 public nonprofit corporations to be spent for local public
25 projects.

26 (c) Money received from the compact waste disposal facility
27 license holder [~~low-level radioactive waste fund~~] under this

1 section may be spent only for [~~local~~] public projects in the host
2 county that are for the use and benefit of the public at large. [~~The~~
3 ~~board shall adopt guidelines for the expenditure of money received~~
4 ~~under this section, and the commissioners court shall spend or~~
5 ~~disburse the money for use according to those guidelines.~~]

6 (d) Money received by the commissioners court of the host
7 county under this section is not a loan or grant-in-aid subject to
8 review by a regional planning commission under Chapter 391, Local
9 Government Code. [~~Annually the commissioners court shall provide~~
10 ~~to the board a detailed accounting of the money held, expended, or~~
11 ~~disbursed by the county.~~]

12 SECTION 9. Section 402.219, Health and Safety Code, is
13 transferred to Subchapter F, Chapter 401, Health and Safety Code,
14 renumbered as Section 401.248, and amended to read as follows:

15 Sec. 401.248 [~~402.219~~]. LIMITATIONS ON LOW-LEVEL
16 RADIOACTIVE WASTE DISPOSAL. (a) [~~Except as provided by an~~
17 ~~interstate compact, a disposal site may accept only low-level~~
18 ~~radioactive waste that is generated in this state.~~

19 [~~(b)~~] The board by rule shall exclude from a disposal
20 facility [~~site~~] certain types of low-level radioactive waste that
21 are incompatible with disposal operations.

22 (b) [~~(c)~~] The state may enter into compacts with another
23 state or several states for the disposal in this state of low-level
24 radioactive waste only if the compact:

25 (1) limits the total volume of all low-level
26 radioactive waste to be disposed of in this state from the other
27 state or states to 20 percent of the annual average of low-level

1 radioactive waste that the governor projects will be produced in
2 this state from the years 1995 through 2045;

3 (2) gives this state full administrative control over
4 management and operation of the compact waste disposal facility
5 [~~site~~];

6 (3) requires the other state or states to join this
7 state in any legal action necessary to prevent states that are not
8 members of the compact from disposing of low-level radioactive
9 waste at the compact waste disposal facility [~~site~~];

10 (4) allows this state to charge a fee for the disposal
11 of low-level radioactive waste at the compact waste disposal
12 facility [~~site~~];

13 (5) requires the other state or states to join in any
14 legal action involving liability from the compact waste disposal
15 facility [~~site~~];

16 (6) requires the other state or states to share the
17 full cost of constructing the compact waste disposal facility
18 [~~site~~];

19 (7) allows this state to regulate, in accordance with
20 federal law, the means and routes of transportation of the
21 low-level radioactive waste in this state;

22 (8) requires the other state or states to pay for
23 community assistance projects selected by the host county in an
24 amount not less than \$1 million or 10 percent of the amount
25 contributed by the other state or states;

26 (9) is agreed to by the Texas Legislature, the
27 legislature of the other state or states, and the United States

1 Congress; and

2 (10) complies with all applicable federal law.

3 (c) [~~(d)~~] This section does not affect the ability of this
4 state to transfer low-level radioactive waste to another state.

5 (d) [~~(e)~~] If this state enters into a compact with another
6 state and the terms of the compact conflict with this section, the
7 terms of the compact control.

8 SECTION 10. Sections 402.272, 402.273, and 402.276, Health
9 and Safety Code, are transferred to Subchapter F, Chapter 401,
10 Health and Safety Code, renumbered as Sections 401.245, 401.246,
11 and 401.247, and amended to read as follows:

12 Sec. 401.245 [~~402.272~~]. COMPACT WASTE DISPOSAL FEES. (a)
13 A compact waste disposal facility license holder who receives
14 low-level radioactive waste for disposal pursuant to the Texas
15 Low-Level Radioactive Waste Disposal Compact established under
16 Chapter 403 [~~The board~~] shall have collected a waste disposal fee
17 to be paid by each person who delivers low-level radioactive waste
18 to the compact waste disposal facility [~~authority~~] for disposal.

19 (b) The board by rule shall adopt and periodically revise
20 compact waste disposal fees according to a schedule that is based on
21 the projected annual volume of low-level radioactive waste
22 received, the relative hazard presented by each type of low-level
23 radioactive waste that is generated by the users of radioactive
24 materials, and the costs identified in Section 401.246 [~~402.273~~].

25 (c) In determining relative hazard, the board shall
26 consider the radioactive, physical, and chemical properties of each
27 type of low-level radioactive waste.

1 (d) Rules adopted under this section may include provisions
2 establishing:

3 (1) classification of customers and services; and

4 (2) applicability of fees.

5 (e) Fees adopted under this section must be consistent with
6 the criteria listed under Section 401.246.

7 (f) A rule or order adopted by the department under this
8 section may not conflict with a ruling of a federal regulatory body.

9 Sec. 401.246 [~~402.273~~]. WASTE DISPOSAL FEE CRITERIA. (a)
10 Compact waste [~~Waste~~] disposal fees adopted by the board must be
11 sufficient to:

12 (1) allow the compact waste facility license holder
13 [~~authority~~] to recover costs of operating and maintaining the
14 compact waste disposal facility and a reasonable profit on the
15 operation of that facility [~~maintenance costs~~];

16 (2) provide an amount necessary to meet future costs
17 of decommissioning, closing, and postclosure maintenance and
18 surveillance of the compact waste disposal facility and the compact
19 waste disposal facility portion of the disposal facility site;

20 (3) provide an amount to fund local public projects
21 under Section 401.244 [~~Subchapter I~~];

22 (4) provide a reasonable rate of return on capital
23 investment in the facilities used for management or disposal of
24 compact waste at the compact waste disposal facility; and [~~an~~
25 ~~amount sufficient to fund, in whole or in part, a rangeland and~~
26 ~~wildlife management plan,~~]

27 (5) provide an amount necessary to pay compact waste

1 disposal facility licensing fees, to pay compact waste disposal
2 facility fees set by rule or statute, and to provide security for
3 the compact waste disposal facility as required by the department
4 [~~commission~~] under law and department [~~commission~~] rules[, and

5 ~~(6) provide an amount necessary to fund debt service~~
6 ~~and necessary fees and charges, including insurance premiums and~~
7 ~~similar costs, associated with the issuance and payment of bonds~~
8 ~~under Subchapter K].~~

9 (b) To the extent practicable, the department shall use the
10 methods used by the Public Utility Commission of Texas under
11 Sections 36.051, 36.052, and 36.053, Utilities Code, when
12 establishing overall revenues, reasonable return, and invested
13 capital for the purpose of setting fees under Subsection (a). [~~This~~
14 ~~subsection applies only if the authority does not issue bonds under~~
15 ~~Subchapter K. The waste disposal fees must also include an amount~~
16 ~~sufficient to allow the authority to recover expenses incurred~~
17 ~~before beginning operation of the disposal site amortized over a~~
18 ~~period of not more than 20 years beginning on the first day of~~
19 ~~operation of the disposal site. The fees must be sufficient to~~
20 ~~recover the depository interest that the general revenue fund would~~
21 ~~have earned had the fund not been used to pay expenses incurred~~
22 ~~before the disposal site begins operation. Depository interest~~
23 ~~recovered under this subsection shall be deposited to the credit of~~
24 ~~the general revenue fund. Principal recovered under this~~
25 ~~subsection shall be deposited to the credit of the general revenue~~
26 ~~fund until the amount deposited has fully reimbursed the fund for~~
27 ~~expenses paid from the fund before the disposal site begins~~

1 ~~operation. The remainder of the principal shall be deposited as~~
2 ~~provided by Section 402.272(a).~~

3 ~~[(c) The amount required by Subsection (a)(3) may not be~~
4 ~~less than 10 percent of the annual gross receipts from waste~~
5 ~~received at the disposal site.]~~

6 Sec. 401.247 [~~402.276~~]. REASONABLE AND NECESSARY EXPENSES.
7 Fees paid under this subchapter are reasonable and necessary
8 expenses for ratemaking purposes.

9 SECTION 11. Section 402.275, Health and Safety Code, is
10 transferred to Subchapter F, Chapter 401, Health and Safety Code,
11 renumbered as Section 401.249, and amended to read as follows:

12 Sec. 401.249 [~~402.275~~]. LOW-LEVEL RADIOACTIVE WASTE FUND.

13 (a) The low-level radioactive waste fund is in the state treasury.

14 (b) The low-level radioactive waste fund is an
15 interest-bearing fund. Interest earned on money in the fund shall
16 be deposited to the credit of the fund.

17 (c) Payments [~~Money received by the authority, including~~
18 ~~waste disposal fees, planning and implementation fees, surcharges~~
19 ~~on planning and implementation fees, processing and packaging fees,~~
20 ~~civil penalties, payments~~] made by a party state to a low-level
21 radioactive waste compact entered into under Section 401.248(b)
22 [~~402.219(c)~~], and other receipts collected by the department
23 [~~authority~~] under this chapter shall be deposited to the credit of
24 the low-level radioactive waste fund.

25 (d) Section 403.095, Government Code, does not apply to the
26 low-level radioactive waste fund [~~Except as provided by Subsection~~
27 ~~(f), money in the low-level radioactive waste fund may be used to~~

1 pay:

2 ~~[(1) operating and maintenance costs of the authority,~~

3 ~~[(2) future costs of decommissioning, closing, and~~

4 ~~postclosure maintenance and surveillance of the disposal site,~~

5 ~~[(3) licensing fees and to provide security required~~

6 ~~by the commission,~~

7 ~~[(4) money judgments rendered against the authority~~

8 ~~that are directed by a court of this state to be paid from this fund,~~

9 ~~[(5) expenses associated with implementation of the~~

10 ~~rangeland and wildlife management plan,~~

11 ~~[(6) funds for local public projects under Subchapter~~

12 ~~I,~~

13 ~~[(7) debt service and necessary fees and charges,~~

14 ~~including insurance premiums and similar costs, associated with the~~

15 ~~issuance and payment of bonds under Subchapter K, and~~

16 ~~[(8) expenses for any other purpose under this~~

17 ~~chapter].~~

18 (e) Of each payment made by a party state under Section 5.01
19 of the compact established under Section 403.006 that is credited
20 to the low-level radioactive waste fund:

21 (1) one-half may be used only for the construction of
22 the compact waste disposal facility; and

23 (2) the remainder shall be credited to the perpetual
24 care account. ~~[A payment for debt service and related costs under~~

25 ~~Subsection (d)(7) has priority for payment from the low-level~~
26 ~~radioactive waste fund over a payment for another expense~~

27 ~~authorized by Subsection (d).]~~

1 (f) The department [~~authority~~] may transfer money from the
2 low-level radioactive waste fund to the [~~radiation and~~] perpetual
3 care account [~~fund~~] to make payments required by the department
4 [~~commission~~] under Section 401.303.

5 SECTION 12. Section 401.270(e), Health and Safety Code, is
6 amended to read as follows:

7 (e) The department shall use the security provided by the
8 license holder to pay the costs of actions that are taken or that
9 are to be taken under this section. The department shall send to
10 the comptroller a copy of its order together with necessary written
11 requests authorizing the comptroller to:

- 12 (1) enforce security supplied by the licensee;
- 13 (2) convert an amount of security into cash, as
14 necessary; and
- 15 (3) disburse from the security in the perpetual care
16 account [~~fund~~] the amount necessary to pay the costs.

17 SECTION 13. Section 401.301(b), Health and Safety Code, is
18 amended to read as follows:

19 (b) The board by rule shall set the fee in an amount that may
20 not exceed the actual expenses annually incurred to:

- 21 (1) process applications for licenses or
22 registrations;
- 23 (2) amend or renew licenses or registrations;
- 24 (3) make inspections of license holders and
25 registrants; and
- 26 (4) enforce this chapter and rules, orders, licenses,
27 and registrations under this chapter [~~, and~~]

1 ~~[(5) collect payments to the low-level radioactive~~
2 ~~waste fund and general revenue as provided by Section 402.2721].~~

3 SECTION 14. Section 401.301(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The department may require that each person who holds a
6 specific license issued by the department annually pay to the
7 department an additional five percent of the appropriate annual fee
8 set under Subsection (b). Fees collected under this subsection
9 shall be deposited to the credit of the ~~[radiation and]~~ perpetual
10 care account ~~[fund]~~. The fees are not refundable.

11 SECTION 15. Section 401.303(g), Health and Safety Code, is
12 amended to read as follows:

13 (g) If a license holder satisfies the obligations under this
14 chapter, the issuing agency shall have the comptroller promptly
15 refund to the license holder from the perpetual care account ~~[fund]~~
16 the excess of the amount of all payments made by the license holder
17 to the issuing agency and the investment earnings of those payments
18 over the amount determined to be required for the continuing
19 maintenance and surveillance of land, buildings, and radioactive
20 material conveyed to the state.

21 SECTION 16. Section 401.305, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT ~~[FUND]~~.

24 (a) The radiation and perpetual care account is an account in the
25 general revenue fund ~~[is in the state treasury]~~.

26 (b) The department and commission each shall deposit to the
27 credit of the perpetual care account ~~[fund]~~ money and security they

1 receive under this chapter, including an administrative penalty
2 collected by the department under Sections 401.384-401.390 but
3 excluding fees collected under Sections 401.301(a)-(c) and
4 401.302. Interest earned on money in the perpetual care account
5 [~~fund~~] shall be credited to the perpetual care account [~~fund~~].

6 (c) Money and security in the perpetual care account [~~fund~~]
7 may be administered by the department or commission only for the
8 decontamination, decommissioning, stabilization, reclamation,
9 maintenance, surveillance, control, storage, and disposal of
10 radioactive material for the protection of the public health and
11 safety and the environment under this chapter and for refunds under
12 Section 401.303.

13 (d) Money and security in the perpetual care account [~~fund~~]
14 may not be used for normal operating expenses of the department or
15 commission.

16 (e) The department may use money in the perpetual care
17 account [~~fund~~] to pay for measures:

18 (1) to prevent or mitigate the adverse effects of
19 abandonment of radioactive materials, default on a lawful
20 obligation, insolvency, or other inability by the holder of a
21 license issued by the department to meet the requirements of this
22 chapter or department rules; and

23 (2) to assure the protection of the public health and
24 safety and the environment from the adverse effects of ionizing
25 radiation.

26 (f) The department may provide, by the terms of a contract
27 or lease entered into between the department and any person or by

1 the terms of a license issued by the department to any person, for
2 the decontamination, closure, decommissioning, reclamation,
3 surveillance, or other care of a site or facility subject to
4 department jurisdiction under this chapter as needed to carry out
5 the purpose of this chapter.

6 (g) The existence of the [~~radiation and~~] perpetual care
7 account [~~fund~~] does not make the department liable for the costs of
8 decontamination, transfer, transportation, reclamation,
9 surveillance, or disposal of radioactive material arising from a
10 license holder's abandonment of radioactive material, default on a
11 lawful obligation, insolvency, or inability to meet the
12 requirements of this chapter or department rules.

13 SECTION 17. Section 401.342(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) The attorney general may petition the court for:

16 (1) an order enjoining the act or practice or an order
17 directing compliance and reimbursement of the perpetual care
18 account [~~fund~~], if applicable;

19 (2) civil penalties as provided by Section 401.381; or

20 (3) a permanent or temporary injunction, restraining
21 order, or other appropriate order if the department shows that the
22 person engaged in or is about to engage in any of the acts or
23 practices.

24 SECTION 18. Section 401.343(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) The department shall seek reimbursement, either by an
27 order of the department or a suit filed by the attorney general at

1 the department's request, of security from the perpetual care
2 account [~~fund~~] used by the department to pay for actions, including
3 corrective measures, to remedy spills or contamination by
4 radioactive material resulting from a violation of this chapter
5 relating to an activity under the department's jurisdiction or a
6 rule, license, registration, or order adopted or issued by the
7 department under this chapter.

8 SECTION 19. Section 403.001(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) The governor shall appoint six members to represent this
11 state on the commission established by Article III of the Texas
12 Low-Level Radioactive Waste Disposal Compact. One of the voting
13 members of the compact commission shall be a legal resident of the
14 host county [~~Hudspeth County, Texas~~].

15 SECTION 20. Section 5.013(a), Water Code, is amended to
16 read as follows:

17 (a) The commission has general jurisdiction over:

18 (1) water and water rights including the issuance of
19 water rights permits, water rights adjudication, cancellation of
20 water rights, and enforcement of water rights;

21 (2) continuing supervision over districts created
22 under Article III, Sections 52(b)(1) and (2), and Article XVI,
23 Section 59, of the Texas Constitution;

24 (3) the state's water quality program including
25 issuance of permits, enforcement of water quality rules, standards,
26 orders, and permits, and water quality planning;

27 (4) the determination of the feasibility of certain

1 federal projects;

2 (5) the adoption and enforcement of rules and
3 performance of other acts relating to the safe construction,
4 maintenance, and removal of dams;

5 (6) conduct of the state's hazardous spill prevention
6 and control program;

7 (7) the administration of the state's program relating
8 to inactive hazardous substance, pollutant, and contaminant
9 disposal facilities;

10 (8) the administration of a portion of the state's
11 injection well program;

12 (9) the administration of the state's programs
13 involving underground water and water wells and drilled and mined
14 shafts;

15 (10) the state's responsibilities relating to regional
16 waste disposal;

17 (11) the responsibilities assigned to the commission
18 by Chapters 361, 363, 382, and 401, [~~and 402,~~] Health and Safety
19 Code;

20 (12) the administration of the national flood
21 insurance program;

22 (13) administration of the state's water rate program
23 under Chapter 13 of this code; and

24 (14) any other areas assigned to the commission by
25 this code and other laws of this state.

26 SECTION 21. Section 7.033, Water Code, is amended to read as
27 follows:

1 Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH
2 AND SAFETY CODE, VIOLATION. The commission shall seek
3 reimbursement, either by a commission order or by a suit filed under
4 Subchapter D by the attorney general at the commission's request,
5 of security from the radiation and perpetual care account [~~fund~~]
6 used by the commission to pay for actions, including corrective
7 measures, to remedy spills or contamination by radioactive material
8 resulting from a violation of Chapter 401, Health and Safety Code,
9 relating to an activity under the commission's jurisdiction or a
10 rule adopted or a license, registration, or order issued by the
11 commission under that chapter.

12 SECTION 22. Sections 401.153 and 401.306, Health and Safety
13 Code, Chapter 402, Health and Safety Code, and Section 51.0511,
14 Natural Resources Code, are repealed.

15 SECTION 23. This Act takes effect September 1, 2003.