

1-1 By: West, Chisum, Smith of Harris H.B. No. 1567  
1-2 (Senate Sponsor - Bivins)  
1-3 (In the Senate - Received from the House April 24, 2003;  
1-4 April 25, 2003, read first time and referred to Committee on  
1-5 Natural Resources; May 2, 2003, reported adversely, with favorable  
1-6 Committee Substitute by the following vote: Yeas 7, Nays 2;  
1-7 May 2, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 1567 By: Jackson

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to the disposal of low-level radioactive waste;  
1-12 authorizing the exercise of the power of eminent domain.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 401.003(11), Health and Safety Code, is  
1-15 amended to read as follows:

1-16 (11) "Perpetual care account" [~~"Fund"~~] means the  
1-17 radiation and perpetual care account [~~fund~~].

1-18 SECTION 2. Sections 401.052(b), (c), (d), (e), and (f),  
1-19 Health and Safety Code, are amended to read as follows:

1-20 (b) Rules adopted under this section for low-level  
1-21 radioactive waste must [~~shall~~]:

1-22 (1) to the extent practicable, be compatible with  
1-23 United States Department of Transportation and United States  
1-24 Nuclear Regulatory Commission regulations relating to the  
1-25 transportation of low-level radioactive waste;

1-26 (2) require each shipper and transporter of low-level  
1-27 radioactive waste to adopt an emergency plan approved by the  
1-28 department for responding to transportation accidents;

1-29 (3) require the notification and reporting of  
1-30 accidents to the department and to local emergency planning  
1-31 committees in the county where the accident occurs;

1-32 (4) require each shipper to adopt a quality control  
1-33 program approved by the department to verify that shipping  
1-34 containers are suitable for shipment to a licensed disposal  
1-35 facility; [~~and~~]

1-36 (5) assess a fee on shippers for shipments to a Texas  
1-37 low-level radioactive waste disposal facility of low-level  
1-38 radioactive waste originating in Texas or out-of-state; and

1-39 (6) require a transporter to carry liability insurance  
1-40 in an amount the board determines is sufficient to cover damages  
1-41 likely to be caused by a shipping accident in accordance with  
1-42 regulations imposed by the United States Department of  
1-43 Transportation and the United States Nuclear Regulatory  
1-44 Commission.

1-45 (c) In adopting [~~promulgating~~] rules under this section,  
1-46 the board shall consult with the advisory board [~~and the~~  
1-47 ~~commission~~].

1-48 (d)(1) Fees assessed under the rules adopted under  
1-49 Subsection (b)(5) [this section shall]:

1-50 (A) may not exceed \$10 per cubic foot of shipped  
1-51 low-level radioactive waste;

1-52 (B) shall be collected by the compact waste  
1-53 disposal facility license holder under Subchapter F [authority] and  
1-54 remitted to the department for deposit [deposited] to the credit of  
1-55 the [~~radiation and~~] perpetual care account [fund]; and

1-56 (C) may be used only [~~exclusively~~] by the  
1-57 department for emergency planning for and response to  
1-58 transportation accidents involving low-level radioactive waste.

1-59 (2) Fee assessments under the rules adopted under  
1-60 Subsection (b)(5) [this section] shall be suspended when the amount  
1-61 of fees collected reaches \$500,000, except that if the balance of  
1-62 fees collected is reduced to \$350,000 or less, the assessments  
1-63 shall be reinstated to bring the balance of fees collected to

2-1 \$500,000.

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

2-7 (f) In this section, "shipper" [~~+~~  
 2-8 [~~(1) "Shipper"~~] means a person who generates  
 2-9 low-level radioactive waste and ships or arranges with others to  
 2-10 ship the waste to a disposal site.

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

2-13 SECTION 3. Subchapter C, Chapter 401, Health and Safety  
 2-14 Code, is amended by adding Section 401.071 to read as follows:

2-15 Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO  
 2-16 LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

2-17 (1) conduct, request, and participate in studies,  
 2-18 investigations, and research relating to selection, preparation,  
 2-19 construction, operation, maintenance, decommissioning, closing,  
 2-20 and financing of disposal sites for and disposal of low-level  
 2-21 radioactive waste; and

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

2-26 (b) In carrying out its duties under this section the  
 2-27 commission may:

2-28 (1) apply for, receive, accept, and administer gifts,  
 2-29 grants, and other funds available from any source; and

2-30 (2) contract with the federal government, the state,  
 2-31 interstate agencies, local governmental agencies, and private  
 2-32 entities.

2-33 SECTION 4. Section 401.104(b), Health and Safety Code, is  
 2-34 amended to read as follows:

2-35 (b) Except as provided by Subsection (e), the commission by  
 2-36 rule shall provide for licensing for the disposal of radioactive  
 2-37 material except for the disposal of by-product material defined by  
 2-38 Section 401.003(3)(B) and the disposal of low-level radioactive  
 2-39 waste under Subchapter F. The department by rule shall provide for  
 2-40 licensing the disposal of by-product material defined by Section  
 2-41 401.003(3)(B).

2-42 SECTION 5. Section 401.109, Health and Safety Code, is  
 2-43 amended to read as follows:

2-44 Sec. 401.109. SECURITY. (a) The department or commission  
 2-45 may require a holder of a license issued by the agency to provide  
 2-46 security acceptable to the agency to assure performance of the  
 2-47 license holder's obligations under this chapter. The department or  
 2-48 commission shall deposit security or evidence of security provided  
 2-49 under this section to the credit of the perpetual care account.

2-50 (b) The department or commission shall require a holder of a  
 2-51 license that authorizes the disposal of low-level radioactive waste  
 2-52 as provided by Subchapter F to provide security acceptable to the  
 2-53 agency to assure performance of the license holder's obligations  
 2-54 under this chapter.

2-55 (c) The amount and type of security required shall be  
 2-56 determined under the agency's rules in accordance with criteria  
 2-57 that include:

2-58 (1) the need for and scope of decontamination,  
 2-59 decommissioning, reclamation, or disposal activity reasonably  
 2-60 required to protect the public health and safety and the  
 2-61 environment;

2-62 (2) reasonable estimates of the cost of  
 2-63 decontamination, decommissioning, reclamation, and disposal as  
 2-64 provided by Section 401.303; and

2-65 (3) the cost of perpetual maintenance and  
 2-66 surveillance, if any.

2-67 (d) [~~(c)~~] In this section "security" includes:

2-68 (1) a cash deposit;

2-69 (2) a surety bond;

- 3-1 (3) a certificate of deposit;
- 3-2 (4) an irrevocable letter of credit;
- 3-3 (5) a deposit of government securities;
- 3-4 (6) an insurance policy; and
- 3-5 (7) ~~[(6)]~~ other security acceptable to the agency.

3-6 SECTION 6. Section 401.152(b), Health and Safety Code, is  
3-7 amended to read as follows:

3-8 (b) The agency shall use the security provided by the  
3-9 license holder to pay the costs of actions that are taken or that  
3-10 are to be taken under this section. The agency shall send to the  
3-11 comptroller a copy of its order together with necessary written  
3-12 requests authorizing the comptroller to:

- 3-13 (1) enforce security supplied by the license holder;
- 3-14 (2) convert an amount of security into cash, as  
3-15 necessary; and
- 3-16 (3) disburse from the security in the perpetual care  
3-17 account ~~[fund]~~ the amount necessary to pay the costs.

3-18 SECTION 7. Subchapter F, Chapter 401, Health and Safety  
3-19 Code, is amended to read as follows:

3-20 SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL  
3-21 RADIOACTIVE WASTE DISPOSAL

3-22 Sec. 401.2005. DEFINITIONS. In this subchapter:

3-23 (1) "Compact waste" means low-level radioactive waste  
3-24 that:

3-25 (A) is generated in a host state or a party state;  
3-26 or

3-27 (B) is not generated in a host state or a party  
3-28 state but has been approved for importation to this state by the  
3-29 compact commission under Section 3.05 of the compact established  
3-30 under Section 403.006.

3-31 (2) "Compact waste disposal facility" means the  
3-32 low-level radioactive waste disposal facility licensed by the  
3-33 department under this subchapter for the disposal of compact waste.

3-34 (3) "Disposal facility site" means the tract of land  
3-35 on which is located the compact waste disposal facility and the  
3-36 federal facility waste disposal facility, if applicable. The term  
3-37 includes the immediate area surrounding the facility or facilities.

3-38 (4) "Federal facility waste" means low-level  
3-39 radioactive waste that is the responsibility of the federal  
3-40 government under the Low-Level Radioactive Waste Policy Act, as  
3-41 amended by the Low-Level Radioactive Waste Policy Amendments Act of  
3-42 1985 (42 U.S.C. Sections 2021b-2021j).

3-43 (5) "Federal facility waste disposal facility" means a  
3-44 facility for the disposal of federal facility waste licensed under  
3-45 Section 401.216.

3-46 (6) "Host state" has the meaning assigned by Section  
3-47 2.01 of the compact established under Section 403.006.

3-48 (7) "Party state" has the meaning assigned by Section  
3-49 2.01 of the compact established under Section 403.006.

3-50 Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE  
3-51 DISPOSAL. The department ~~[commission]~~ shall directly regulate the  
3-52 disposal of low-level radioactive waste in accordance with this  
3-53 subchapter. The person making the disposal shall comply with this  
3-54 subchapter and department ~~[commission]~~ rules.

3-55 Sec. 401.202. LICENSING AUTHORITY. (a) The ~~[commission~~  
3-56 ~~or]~~ department may ~~[, within its respective jurisdiction, shall]~~  
3-57 grant, deny, renew, revoke, suspend, or withdraw licenses for the  
3-58 disposal of low-level radioactive waste from other persons and for  
3-59 the processing of that waste.

3-60 (b) The department shall receive applications for and may  
3-61 issue not more than one license for a single compact waste disposal  
3-62 facility. The department may issue the license only for a facility  
3-63 that meets:

3-64 (1) requirements for licensing provided by this  
3-65 subchapter and by department rules; and

3-66 (2) requirements for disposal adopted by the  
3-67 department that meet federal requirements for disposal.

3-68 (c) Except as provided by Section 401.216, the department  
3-69 shall provide that the compact waste disposal facility license

4-1 authorizes only the disposal of compact waste.

4-2 ~~[Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. A~~  
 4-3 ~~low-level radioactive waste disposal license may be issued only to~~  
 4-4 ~~a public entity specifically authorized by law for low-level~~  
 4-5 ~~radioactive waste disposal.]~~

4-6 Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application  
 4-7 for a compact waste disposal facility license ~~[to dispose of~~  
 4-8 ~~low-level radioactive waste from other persons]~~ may not be  
 4-9 considered unless the applicant has acquired the title to and any  
 4-10 interest in land and buildings as required by department  
 4-11 ~~[commission]~~ rule.

4-12 (b) If an applicant for a compact waste disposal license is  
 4-13 unsuccessful in acquiring a mineral right that the rules adopted  
 4-14 under Subsection (a) require the applicant to acquire, the  
 4-15 department may allow the applicant, to the extent permissible under  
 4-16 federal law, to enter into a surface use agreement that restricts  
 4-17 mineral access, including slant drilling and subsurface mining, to  
 4-18 the extent necessary to prevent intrusion into the disposal  
 4-19 facility site.

4-20 (c) If an applicant cannot reach a surface use agreement  
 4-21 described by Subsection (b) with a private landowner, the attorney  
 4-22 general shall, on request of the department, institute condemnation  
 4-23 proceedings as provided under Chapter 21, Property Code, to acquire  
 4-24 fee simple interest in the mineral right.

4-25 Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO  
 4-26 DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste  
 4-27 disposal facility license holder ~~[A person who is licensed to~~  
 4-28 ~~dispose of low-level radioactive waste from other persons]~~ shall:

4-29 (1) arrange for and pay the costs of management,  
 4-30 control, stabilization, and disposal of compact ~~[low-level~~  
 4-31 ~~radioactive]~~ waste and the decommissioning of the licensed  
 4-32 activity;

4-33 (2) convey to the state when the license is issued all  
 4-34 required right, title, and interest in land and buildings acquired  
 4-35 under department ~~[commission]~~ rules adopted under Section 401.204,  
 4-36 together with requisite rights of access to that property; and

4-37 (3) formally acknowledge before termination of the  
 4-38 license the conveyance to the state of the right, title, and  
 4-39 interest in compact ~~[low-level radioactive]~~ waste located on the  
 4-40 property conveyed.

4-41 (b) The compact waste disposal facility license holder, if  
 4-42 licensed under Section 401.216 to dispose of federal facility  
 4-43 waste, shall:

4-44 (1) arrange for and pay the costs of management,  
 4-45 control, stabilization, and disposal of federal facility waste and  
 4-46 the decommissioning of the licensed federal facility waste disposal  
 4-47 activity;

4-48 (2) on decommissioning of the licensed federal  
 4-49 facility waste disposal activity, convey to the federal government,  
 4-50 as provided by the federal Nuclear Waste Policy Act of 1982,  
 4-51 Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all  
 4-52 required right, title, and interest in land and buildings acquired  
 4-53 under department rules under Section 401.204, together with  
 4-54 requisite rights of access to that property; and

4-55 (3) formally acknowledge before termination of the  
 4-56 license the conveyance to the federal government of the right,  
 4-57 title, and interest in radioactive waste located on the property  
 4-58 conveyed.

4-59 Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste  
 4-60 disposal facility license holder shall convey to the state at no  
 4-61 cost to the state title to the compact waste delivered to the  
 4-62 disposal facility for disposal at the time the waste is accepted at  
 4-63 the site. Acceptance occurs when the acceptance criteria specified  
 4-64 in the license have been satisfied. This section does not apply to  
 4-65 federal facility waste accepted at a federal facility waste  
 4-66 disposal facility.

4-67 (b) The title and all related rights and interest in compact  
 4-68 waste conveyed under this section are the property of the  
 4-69 department on the state's behalf. The department may administer

5-1 the waste as property in the name of the state.

5-2 Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste  
 5-3 disposal facility license holder [of a license to dispose of  
 5-4 low-level radioactive waste from other persons] shall reimburse the  
 5-5 department [commission] for the salary and other expenses of two or  
 5-6 more [a] resident inspectors [inspector] employed by the department  
 5-7 [commission].

5-8 (b) The department [commission] may require that the  
 5-9 compact waste disposal facility license holder provide facilities  
 5-10 at the [a] disposal site for the resident inspectors [inspector].

5-11 Sec. 401.207. OUT-OF-STATE WASTE. The compact waste  
 5-12 disposal facility [A] license holder may not accept low-level  
 5-13 radioactive waste generated in another state for [processing or]  
 5-14 disposal under a license issued by the department [commission]  
 5-15 unless the waste is:

5-16 (1) accepted under a compact to which the state is a  
 5-17 contracting party;

5-18 (2) federal facility waste that the license holder is  
 5-19 licensed to dispose of under Section 401.216 [from a state having an  
 5-20 operating low-level radioactive waste disposal site at which that  
 5-21 state is willing to accept low-level radioactive waste generated in  
 5-22 this state]; or

5-23 (3) generated from manufactured sources or devices  
 5-24 originating in this state.

5-25 Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL  
 5-26 RADIOACTIVE WASTE DISPOSAL SITES. (a) The department [commission]  
 5-27 may acquire the fee simple title in land, affected mineral rights,  
 5-28 and buildings at which low-level radioactive waste can be or is  
 5-29 being disposed of in a manner consistent with public health and  
 5-30 safety and the environment.

5-31 (b) Property acquired under this section may be used only  
 5-32 for disposing of low-level radioactive waste until the department  
 5-33 [commission] determines that another use would not endanger the  
 5-34 health, safety, or general welfare of the public or the  
 5-35 environment.

5-36 (c) The department [commission] may lease property acquired  
 5-37 under this section for operating a disposal site [sites] for  
 5-38 low-level radioactive waste.

5-39 (d) The right, title, and interest in low-level radioactive  
 5-40 waste accepted for disposal at property and facilities acquired  
 5-41 under this section and any other interest acquired under this  
 5-42 chapter are the property of the department [commission], acting on  
 5-43 behalf of the state, and shall be administered and controlled by the  
 5-44 department [commission] in the name of the state.

5-45 (e) A right, title, or interest acquired under this chapter  
 5-46 does not vest in any fund created by the Texas Constitution.

5-47 Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level  
 5-48 radioactive waste and land and buildings transferred to the state  
 5-49 or to the federal government under this chapter shall be  
 5-50 transferred to the state or to the federal government without cost,  
 5-51 other than administrative and legal costs incurred in making the  
 5-52 transfer.

5-53 Sec. 401.211. LIABILITY. (a) The transfer [to the state]  
 5-54 of the title to low-level radioactive waste and land and buildings  
 5-55 to the state or to the federal government does not relieve a license  
 5-56 holder of liability for any act or omission [fraudulent or  
 5-57 negligent acts] performed before the transfer or while the  
 5-58 low-level radioactive waste or land and buildings are in the  
 5-59 possession and control of the license holder.

5-60 (b) The acceptance, storage, or disposal of federal  
 5-61 facility waste by the compact waste disposal facility license  
 5-62 holder at a federal facility waste disposal facility does not  
 5-63 create any liability under state law on the part of the state, or on  
 5-64 the part of any officer or agency of the state, for damages,  
 5-65 removal, or remedial action with respect to the land, the facility,  
 5-66 or the waste accepted, stored, or disposed of.

5-67 (c) The compact waste disposal facility license must  
 5-68 require the license holder to indemnify the state for any liability  
 5-69 imposed on the state under state or federal law, as required by the

6-1 department for the disposal of federal facility waste.

6-2 Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY  
 6-3 MEASURES. The department [~~commission~~] may undertake monitoring,  
 6-4 maintenance, and emergency measures that are necessary to protect  
 6-5 the public health and safety and the environment in connection with  
 6-6 low-level radioactive waste and property for which it has assumed  
 6-7 custody.

6-8 Sec. 401.213. INTERSTATE COMPACTS. The department  
 6-9 [~~commission~~] shall cooperate with and encourage the use of  
 6-10 interstate compacts, including the Southern States Energy Board, to  
 6-11 develop regional sites that divide among the states the disposal  
 6-12 burden of low-level radioactive waste generated in the region.

6-13 Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT.  
 6-14 The compact waste disposal facility licensed under this subchapter  
 6-15 is the regional disposal facility established and operated under  
 6-16 the compact established under Chapter 403 for purposes of the  
 6-17 federal Low-Level Radioactive Waste Policy Act, as amended by the  
 6-18 Low-Level Radioactive Waste Policy Amendments Act of 1985 (42  
 6-19 U.S.C. Sections 2021b-2021j).

6-20 Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE.  
 6-21 Subject to limitations provided by Sections 401.207 and 401.248,  
 6-22 the compact waste disposal facility shall accept for disposal all  
 6-23 compact waste that is presented to it and that is properly processed  
 6-24 and packaged.

6-25 Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The  
 6-26 department may license the compact waste disposal facility license  
 6-27 holder to dispose of federal facility waste. The department may  
 6-28 license federal facility waste disposal only at a separate and  
 6-29 distinct facility that is operated exclusively for the disposal of  
 6-30 federal facility waste and that is adjacent to the compact waste  
 6-31 disposal facility.

6-32 (b) In addition to any restrictions imposed by the  
 6-33 performance objective established by 10 C.F.R. Section 61.41, the  
 6-34 compact waste disposal facility may not accept for disposal more  
 6-35 than 10 million cubic yards of federal facility waste at the federal  
 6-36 facility waste disposal facility.

6-37 (c) The department may not allow commingling of compact  
 6-38 waste and federal facility waste.

6-39 (d) The compact waste disposal facility license holder may  
 6-40 not accept federal facility waste at a federal facility waste  
 6-41 disposal facility until the license holder is ready to accept  
 6-42 compact waste at the compact waste disposal facility.

6-43 Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The  
 6-44 department may not issue a license for a compact waste disposal  
 6-45 facility or license the operation of a federal facility waste  
 6-46 disposal facility if the disposal facility site is located:

6-47 (1) in a county any part of which is located 62 miles  
 6-48 or less from an international boundary;

6-49 (2) in a county in which the average annual rainfall is  
 6-50 greater than 20 inches;

6-51 (3) in a county that adjoins river segment 2309, 2310,  
 6-52 or 2311 as identified by the commission in the Texas Surface Water  
 6-53 Quality Standards, 30 T.A.C. Section 307.10(3);

6-54 (4) in a 100-year flood plain; or

6-55 (5) less than 20 miles upstream of or up-drainage from  
 6-56 the maximum elevation of the surface of a reservoir project that:

6-57 (A) has been constructed or is under construction  
 6-58 by the United States Bureau of Reclamation or the United States Army  
 6-59 Corps of Engineers; or

6-60 (B) has been approved for construction by the  
 6-61 Texas Water Development Board as part of the state water plan under  
 6-62 Subchapter C, Chapter 16, Water Code.

6-63 Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this  
 6-64 section, "Class A low-level radioactive waste," "Class B low-level  
 6-65 radioactive waste," and "Class C low-level radioactive waste" have  
 6-66 the meanings assigned by department rule.

6-67 (b) The compact waste disposal facility license holder  
 6-68 shall dispose of Class B low-level radioactive waste and Class C  
 6-69 low-level radioactive waste:

7-1                   (1) within a reinforced concrete container and within  
 7-2 a reinforced concrete barrier or within containment structures made  
 7-3 of materials technologically equivalent or superior to reinforced  
 7-4 concrete; and

7-5                   (2) in such a manner that the waste can be monitored  
 7-6 and retrieved.

7-7                   (c) The department by rule may require a compact waste  
 7-8 disposal facility license holder to dispose of certain Class A  
 7-9 low-level radioactive wastes that present a hazard because of their  
 7-10 high radiation levels in the manner required for Class B low-level  
 7-11 radioactive waste and Class C low-level radioactive waste under  
 7-12 Subsection (b). To the extent practicable, rules adopted under  
 7-13 this subsection shall be consistent with federal rules regarding  
 7-14 classification of low-level radioactive waste under 10 C.F.R. Part  
 7-15 61.

7-16                   Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL  
 7-17 RADIOACTIVE WASTE. (a) As a condition for obtaining a compact  
 7-18 waste disposal facility license, an applicant must submit to the  
 7-19 department or its designee evidence relating to the reasonableness  
 7-20 of any technique for managing low-level radioactive waste to be  
 7-21 practiced at the proposed disposal facility or facilities.

7-22                   (b) Before determining the techniques to be used for  
 7-23 managing low-level radioactive waste, an applicant shall study  
 7-24 alternative techniques, including:

7-25                   (1) waste processing and reduction at the site of  
 7-26 waste generation and at the disposal facility; and

7-27                   (2) the use of aboveground isolation facilities.

7-28                   Sec. 401.220. DESIGN OF FACILITY. The design of a disposal  
 7-29 facility should incorporate, to the extent practicable, safeguards  
 7-30 against hazards resulting from local meteorological conditions,  
 7-31 including phenomena such as hurricanes, tornados, earthquakes,  
 7-32 earth tremors, violent storms, and susceptibility to flooding.

7-33                   Sec. 401.221. MIXED WASTE. (a) In this section, "mixed  
 7-34 waste" means a combination of hazardous waste as defined by Chapter  
 7-35 361 and low-level radioactive waste and includes federal mixed  
 7-36 waste.

7-37                   (b) The compact waste disposal facility license holder in  
 7-38 accepting mixed waste at the compact waste disposal facility or a  
 7-39 federal facility waste disposal facility shall comply with Chapter  
 7-40 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C.  
 7-41 Section 6901 et seq.), as amended, and this chapter.

7-42                   Sec. 401.222. TERM OF LICENSE. The compact waste disposal  
 7-43 facility license issued under this subchapter expires on the 15th  
 7-44 anniversary of its date of issuance and may be renewed for one or  
 7-45 more terms of 10 years.

7-46                   Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The department  
 7-47 and local public health officials shall develop a health  
 7-48 surveillance survey for the population located in the vicinity of  
 7-49 the disposal facility site.

7-50                   Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The  
 7-51 department shall adopt rules relating to the packaging of  
 7-52 radioactive waste.

7-53                   Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a)  
 7-54 On arrival of a shipment of low-level radioactive waste at the  
 7-55 compact waste disposal facility or a federal facility waste  
 7-56 disposal facility, the compact waste disposal facility license  
 7-57 holder must determine that the waste complies with all laws, rules,  
 7-58 and standards relating to processing and packaging of low-level  
 7-59 radioactive waste before the waste is accepted for disposal at the  
 7-60 facility.

7-61                   (b) A person making a shipment of low-level radioactive  
 7-62 waste that is in excess of 75 cubic feet shall give the compact  
 7-63 waste disposal facility license holder written notice of the  
 7-64 shipment at least 72 hours before shipment to the compact waste  
 7-65 disposal facility or a federal facility waste disposal facility  
 7-66 begins. The written notice must contain information required by  
 7-67 the department.

7-68                   Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL  
 7-69 RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not

8-1 properly processed or packaged arrives at the compact waste  
8-2 disposal facility or a federal facility waste disposal facility,  
8-3 the compact waste disposal facility license holder shall properly  
8-4 process and package the waste for disposal and charge the person  
8-5 making the shipment a fee to have the low-level radioactive waste  
8-6 properly processed and packaged.

8-7 (b) The compact waste disposal facility license holder  
8-8 shall report to the federal and state agencies that establish rules  
8-9 and standards for processing, packaging, and transporting  
8-10 low-level radioactive waste any person who delivers to the compact  
8-11 waste disposal facility or a federal facility waste disposal  
8-12 facility low-level radioactive waste that is not properly processed  
8-13 or packaged.

8-14 Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE  
8-15 DISPOSAL FACILITY LICENSE. (a) In selecting an application for the  
8-16 compact waste disposal facility license, the department shall:

8-17 (1) issue notice of the opportunity to submit an  
8-18 application to dispose of low-level radioactive waste in accordance  
8-19 with Section 401.228;

8-20 (2) review all applications received under  
8-21 Subdivision (1) for administrative completeness;

8-22 (3) evaluate all administratively complete  
8-23 applications in accordance with the evaluation criteria  
8-24 established by Sections 401.233-401.236 and shall select the  
8-25 application that has the highest comparative merit in accordance  
8-26 with Section 401.232; and

8-27 (4) review the selected application under Subdivision  
8-28 (3) for technical completeness and issue a draft license in  
8-29 accordance with Sections 401.237 and 401.238.

8-30 (b) If the selected application is rejected or denied by the  
8-31 department, the department may select the next highest comparative  
8-32 merit application and proceed in accordance with Subsection (a)(4).

8-33 Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later  
8-34 than January 1, 2004, the department shall give to the secretary of  
8-35 state for publication in the Texas Register notice that:

8-36 (1) the department will accept applications for a  
8-37 30-day period, beginning 180 days after the date of the Texas  
8-38 Register notice, for the siting, construction, and operation of a  
8-39 facility or facilities for disposal of low-level radioactive waste;

8-40 (2) applications must comply with Chapter 401, Health  
8-41 and Safety Code, the rules of the department, and any other  
8-42 applicable requirements in the department's discretion;

8-43 (3) applications must include a nonrefundable  
8-44 \$500,000 application processing fee;

8-45 (4) applications received within the 30-day  
8-46 application receipt period will be evaluated by the department for  
8-47 administrative completeness;

8-48 (5) applications deemed administratively complete  
8-49 will be evaluated by the department in accordance with the  
8-50 statutory evaluation criteria under Sections 401.233-401.236; and

8-51 (6) based on the department's evaluation, one  
8-52 application will be selected to be processed by the department.

8-53 Sec. 401.229. APPLICATION PROCESSING FEE. An application  
8-54 for a compact waste disposal facility license must include payment  
8-55 to the department of an application processing fee of \$500,000. The  
8-56 department may not review an application for administrative  
8-57 completeness until the department receives the application  
8-58 processing fee. The application processing fee is nonrefundable.

8-59 Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day  
8-60 period beginning 180 days after the date notice is published under  
8-61 Section 401.228, the department shall accept applications for a  
8-62 compact waste disposal facility license.

8-63 (b) Not later than the 45th day after the date an  
8-64 application is received, the department shall issue an  
8-65 administrative notice of deficiency to each applicant whose  
8-66 application is timely submitted but is determined by the department  
8-67 to be administratively incomplete.

8-68 (c) The department shall provide an applicant for whom an  
8-69 administrative notice of deficiency is issued not more than three



9-1 30-day opportunities to cure the noted deficiencies in the  
9-2 application.

9-3 (d) The department shall reject any application that, after  
9-4 the period for correcting deficiencies has expired, is not  
9-5 administratively complete.

9-6 Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The  
9-7 department shall consider as administratively complete an  
9-8 application for which the department has received the portions of  
9-9 the application necessary to allow the department to review the  
9-10 technical merits of the application, including:

9-11 (1) the identity and qualifications of the applicant;

9-12 (2) a description of the proposed disposal facility or  
9-13 facilities and disposal facility site;

9-14 (3) a description of the character of the proposed  
9-15 activities and the types and quantities of waste to be managed at  
9-16 the disposal facility or facilities;

9-17 (4) a description of the proposed schedules for  
9-18 construction, receipt of waste, and closure;

9-19 (5) a description of the financial assurance mechanism  
9-20 to be used;

9-21 (6) a description of the design features of the  
9-22 facility or facilities, along with a description of the methods of  
9-23 construction and operation of the facility or facilities;

9-24 (7) a characterization of the area and disposal  
9-25 facility site characteristics, including ecology, geology, soils,  
9-26 hydrology, natural radiation background, climatology, meteorology,  
9-27 demography, and current land uses;

9-28 (8) a description of the safety programs to be used at  
9-29 the proposed facility or facilities;

9-30 (9) a copy of the warranty deed or other conveyance  
9-31 showing required right, title, and interest in the land and  
9-32 buildings on which the facility or facilities are proposed to be  
9-33 located is owned in fee by the applicant as required by Section  
9-34 401.204;

9-35 (10) an application processing fee in the amount  
9-36 prescribed by Section 401.229 and proof of additional funds  
9-37 sufficient to cover any further costs of processing the application  
9-38 as estimated by the department; and

9-39 (11) a copy of a resolution of support of the proposed  
9-40 facility or facilities from the commissioners court of the county  
9-41 in which the facility or facilities are proposed to be located.

9-42 Sec. 401.232. EVALUATION OF APPLICATIONS; DEPARTMENT  
9-43 SELECTION. (a) The department shall have prepared by department  
9-44 personnel or an independent contractor a written evaluation of each  
9-45 administratively complete application in terms of the criteria  
9-46 established under Sections 401.233-401.236.

9-47 (b) The department shall conduct at least one public meeting  
9-48 in the county or counties where a compact waste disposal facility or  
9-49 federal facility waste disposal facility is to be located to  
9-50 receive public comments on the administratively complete  
9-51 applications. The department shall set the time and place of the  
9-52 meetings as soon as practicable after the close of the period for  
9-53 administrative review of the applications.

9-54 (c) The department may issue a request for further  
9-55 information to each applicant whose application is determined by  
9-56 the department to be insufficient for the purposes of the  
9-57 department's evaluation.

9-58 (d) The department shall provide an applicant for whom a  
9-59 request for further information is issued two 30-day opportunities  
9-60 to adequately respond in the discretion of the department.

9-61 (e) The department shall use the written evaluations and  
9-62 application materials to evaluate each application according to the  
9-63 statutory criteria established by Sections 401.233-401.236. The  
9-64 department shall evaluate each application for each statutory  
9-65 criterion for purposes of comparing the relative merit of the  
9-66 applications, giving:

9-67 (1) equal weight to each criterion within a tier of  
9-68 criteria; and

9-69 (2) 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) Before publication of the notice of the department's intention to accept applications under Section 401.228, the department by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the department may evaluate applications. The criteria must be consistent with those sections.

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

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

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

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

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

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

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

(A) geological characteristics;

(B) topography, including features relating to erosion;

(C) surface and underground hydrology;

(D) meteorological factors; and

(E) natural hazards;

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

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the disposal facility site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site;

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

(5) the ease of access to the site.

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

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

(2) acceptable operational safety; and

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

(d) Financial assurance criteria include:

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

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

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

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

11-1 (B) address any unanticipated extraordinary  
 11-2 events that would pose a risk to public health and safety and the  
 11-3 environment and that may occur at the disposal facility site after  
 11-4 decommissioning and closure of the disposal facility or facilities;  
 11-5 (2) the adequacy of the applicant's financial  
 11-6 assurance in an amount and type acceptable to the department and  
 11-7 adequate to cover potential injury to any property or person;  
 11-8 (3) the adequacy of the applicant's financial  
 11-9 security, as required by department rules; and  
 11-10 (4) the degree of certainty that the applicant will be  
 11-11 able to maintain adequate financial security.

11-12 Sec. 401.234. TIER 2 CRITERIA. The department shall  
 11-13 consider as tier 2 criteria:

11-14 (1) the suitability of facilities at the site that are  
 11-15 associated with proposed activities and the adequacy of their  
 11-16 engineering and design; and

11-17 (2) the suitability of the proposed disposal facility  
 11-18 or facilities for the chemical, radiological, and biological  
 11-19 characteristics of the low-level radioactive waste as classified  
 11-20 under the system established under Section 401.053.

11-21 Sec. 401.235. TIER 3 CRITERIA. The department shall  
 11-22 consider as tier 3 criteria the applicant's:

11-23 (1) technical qualifications to receive, store,  
 11-24 process, and dispose of low-level radioactive waste;

11-25 (2) experience in management and disposal of low-level  
 11-26 radioactive waste and other radioactive materials;

11-27 (3) previous operating practices in this state and  
 11-28 elsewhere, including the practices of a parent, subsidiary, or  
 11-29 affiliated entity of the applicant, related to radioactive  
 11-30 materials;

11-31 (4) record of compliance with environmental statutes,  
 11-32 rules, and licenses in this state and in any other jurisdiction,  
 11-33 including the records of a parent or subsidiary of the applicant,  
 11-34 subject to Section 401.243;

11-35 (5) training programs proposed for its employees whose  
 11-36 duties relate to the proposed disposal facility site and  
 11-37 activities;

11-38 (6) monitoring, recordkeeping, and reporting plans;

11-39 (7) low-level radioactive waste spill detection and  
 11-40 cleanup plans for the proposed disposal facility site and  
 11-41 activities;

11-42 (8) decommissioning and postclosure plans;

11-43 (9) security plans;

11-44 (10) monitoring and protection plans for workers;

11-45 (11) emergency plans;

11-46 (12) plans for background monitoring during the  
 11-47 license period, including analysis of the ambient conditions of the  
 11-48 disposal facility site and analysis of established trends of the  
 11-49 disposal facility site's natural parameters, including:

11-50 (A) natural background radioactivity levels;

11-51 (B) radon gas levels;

11-52 (C) air particulate levels;

11-53 (D) soil characteristics, including chemical  
 11-54 characteristics;

11-55 (E) surface water and groundwater  
 11-56 characteristics; and

11-57 (F) flora and fauna at the site; and

11-58 (13) ability to adequately manage the proposed  
 11-59 disposal facility or facilities and activities for the term of the  
 11-60 license.

11-61 Sec. 401.236. TIER 4 CRITERIA. The department shall  
 11-62 consider as tier 4 criteria:

11-63 (1) the compatibility of uses of land near the  
 11-64 proposed disposal facility site that could be affected by the  
 11-65 construction and operation of the disposal facility or facilities;  
 11-66 and

11-67 (2) possible socioeconomic effects on communities in  
 11-68 the host county of:

11-69 (A) the proposed disposal facility or

12-1 facilities;

12-2 (B) the operation of the proposed disposal  
12-3 facility or facilities; and

12-4 (C) related transportation of low-level  
12-5 radioactive waste to the disposal facility or facilities.

12-6 Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the  
12-7 department's selection of the application that has the highest  
12-8 comparative merit in accordance with Section 401.232, the  
12-9 department shall begin a technical review of the selected  
12-10 application.

12-11 (b) The department shall complete the technical review and  
12-12 prepare a draft license not later than the 15th month after the  
12-13 month in which the technical review begins.

12-14 (c) The department shall give priority to the review of the  
12-15 selected application over all other radioactive materials and waste  
12-16 licensing and registration matters pending before the department,  
12-17 except those the commissioner determines necessary to avert or  
12-18 address a health and safety emergency.

12-19 Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR  
12-20 HEARING. On completion of the technical review of the selected  
12-21 application and preparation of the draft license, the department  
12-22 shall publish, at the applicant's expense, notice of the draft  
12-23 license and specify the requirements for requesting a contested  
12-24 case hearing by a person affected. The notice shall include a  
12-25 statement that the draft license is available for review on the  
12-26 department's website and that the draft license and the application  
12-27 materials are available for review at the offices of the department  
12-28 and in the county or counties in which the proposed disposal  
12-29 facility site is located. Notice shall be published in the Texas  
12-30 Register and in a newspaper of general circulation in each county in  
12-31 which the proposed disposal facility site is located. The  
12-32 applicant shall mail the notice by certified mail to each person who  
12-33 owns land adjacent to the proposed disposal facility site.

12-34 Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION.  
12-35 (a) An administrative law judge of the State Office of  
12-36 Administrative Hearings shall conduct a contested case hearing on  
12-37 the application and draft license if the applicant or a person  
12-38 affected requests a hearing.

12-39 (b) The administrative law judge may not admit as a party to  
12-40 the contested case hearing a person other than the applicant, the  
12-41 commissioner, or a person affected.

12-42 (c) The administrative law judge shall issue a proposal for  
12-43 decision not later than the first anniversary of the publication  
12-44 date of the notice of draft license published under Section  
12-45 401.238.

12-46 (d) The department shall take final action on the proposal  
12-47 for decision of the administrative law judge not later than the 90th  
12-48 day after the date the proposal is issued.

12-49 Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any  
12-50 other law, a person affected by an action of the commissioner or the  
12-51 department under this subchapter may file a petition for judicial  
12-52 review of the action only after the department takes final action on  
12-53 a license application under Section 401.239(d). A petition must be  
12-54 filed not later than the 30th day after the date of the final  
12-55 action.

12-56 (b) In its review of an action under this subchapter, a  
12-57 court may not substitute its judgment for the judgment of the  
12-58 commissioner or the department on the weight of the evidence the  
12-59 commissioner or department considered, but:

12-60 (1) may affirm the action in whole or in part; and

12-61 (2) shall reverse or remand the case for further  
12-62 proceedings if substantial rights of the petitioner have been  
12-63 prejudiced because the administrative findings, inferences,  
12-64 conclusions, or decisions:

12-65 (A) are in violation of a constitutional or  
12-66 statutory provision;

12-67 (B) are in excess of the department's statutory  
12-68 authority;

12-69 (C) are made through unlawful procedure;

13-1 (D) are affected by other error of law;  
 13-2 (E) are not reasonably supported by substantial  
 13-3 evidence considering the reliable and probative evidence in the  
 13-4 record as a whole; or

13-5 (F) are arbitrary or capricious or characterized  
 13-6 by abuse of discretion or clearly unwarranted exercise of  
 13-7 discretion.

13-8 Sec. 401.241. SECURITY. (a) In determining the amount of  
 13-9 security required of a compact waste disposal facility license  
 13-10 holder under Section 401.109, the department shall also consider  
 13-11 the need for financial security to address and prevent unplanned  
 13-12 events that pose a risk to public health and safety and that may  
 13-13 occur after the decommissioning and closure of the compact waste  
 13-14 disposal facility or a federal facility waste disposal facility  
 13-15 licensed under Section 401.216.

13-16 (b) The amount of security required of a license holder  
 13-17 under this section may not be less than \$20 million at the time the  
 13-18 disposal facility site is decommissioned. The department shall use  
 13-19 interest earned on the security to offset any other financial  
 13-20 obligations incurred by the license holder to the department. The  
 13-21 department shall establish a schedule for the total payment of the  
 13-22 amount of the security required under this section based on:

13-23 (1) the amount of low-level radioactive waste received  
 13-24 at the site;

13-25 (2) the long-term risk to health, safety, and the  
 13-26 environment posed by the waste; and

13-27 (3) the need to address and prevent unplanned events  
 13-28 that pose a risk to public health and safety.

13-29 (c) In addition to the forms of security listed under  
 13-30 Section 401.109(d), the department may require a license holder  
 13-31 under this subchapter to provide security in the form of liability  
 13-32 insurance.

13-33 Sec. 401.242. ACCEPTANCE OF WASTE. (a) The department  
 13-34 shall require the compact waste disposal facility license holder to  
 13-35 follow, as closely as is possible, the schedule submitted to the  
 13-36 department under Section 401.231. If the compact waste disposal  
 13-37 facility license holder holds a permit to process, store, or  
 13-38 dispose of hazardous waste under Chapter 361, the license holder  
 13-39 may accept hazardous waste according to the schedule under Section  
 13-40 401.231 before the compact waste disposal facility begins  
 13-41 operation.

13-42 (b) If the department finds that the compact waste disposal  
 13-43 facility license holder has violated this chapter or any department  
 13-44 rule in a manner that may endanger public health or safety, the  
 13-45 director of the Bureau of Radiation Control may prohibit the  
 13-46 license holder from accepting low-level radioactive waste at either  
 13-47 the compact waste disposal facility or the federal facility waste  
 13-48 disposal facility until the department finds that the license  
 13-49 holder is in compliance with the statute or rule found to be  
 13-50 violated.

13-51 Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for  
 13-52 a hearing, the department shall deny an application for a license  
 13-53 under this subchapter or an amendment or renewal for a license under  
 13-54 this subchapter if the applicant's compliance history reveals a  
 13-55 recurring pattern of conduct that demonstrates a consistent  
 13-56 disregard for the regulatory process through a history of  
 13-57 violations of this chapter or the department's rules under this  
 13-58 chapter.

13-59 SECTION 8. Section 402.252, Health and Safety Code, is  
 13-60 transferred to Subchapter F, Chapter 401, Health and Safety Code,  
 13-61 renumbered as Section 401.244, and amended to read as follows:

13-62 Sec. 401.244 [402.252]. HOST COUNTY [LOCAL] PUBLIC  
 13-63 PROJECTS. (a) Subject to Section 401.2446, the compact waste  
 13-64 disposal facility license holder each quarter [The board] shall  
 13-65 [quarterly] transfer [money in the low-level radioactive waste fund  
 13-66 generated by planning and implementation fee surcharges under  
 13-67 Sections 402.2721(e) and (f), and that portion of waste disposal  
 13-68 fees identifiable as adopted for the purposes of Sections  
 13-69 402.273(a)(3) and (b)] to the commissioners court of the host

14-1 county 5 percent of the gross receipts from:  
14-2 (1) compact waste received at the compact waste  
14-3 disposal facility; and  
14-4 (2) any federal facility waste received at a federal  
14-5 facility waste disposal facility licensed under Section 401.216.

14-6 (b) The commissioners court of the host county may:  
14-7 (1) spend the money for ~~[local]~~ public projects in the  
14-8 host county; or  
14-9 (2) disburse the money to other local entities or to  
14-10 public nonprofit corporations to be spent for local public  
14-11 projects.

14-12 (c) Money received from the compact waste disposal facility  
14-13 license holder ~~[low-level radioactive waste fund]~~ under this  
14-14 section may be spent only for ~~[local]~~ public projects in the host  
14-15 county that are for the use and benefit of the public at large. ~~[The~~  
14-16 ~~board shall adopt guidelines for the expenditure of money received~~  
14-17 ~~under this section, and the commissioners court shall spend or~~  
14-18 ~~disburse the money for use according to those guidelines.]~~

14-19 (d) Money received by the commissioners court of the host  
14-20 county under this section is not a loan or grant-in-aid subject to  
14-21 review by a regional planning commission under Chapter 391, Local  
14-22 Government Code. ~~[Annually the commissioners court shall provide~~  
14-23 ~~to the board a detailed accounting of the money held, expended, or~~  
14-24 ~~disbursed by the county.]~~

14-25 SECTION 9. Subchapter F, Chapter 401, Health and Safety  
14-26 Code, is amended by adding Sections 401.2445 and 401.2446 to read as  
14-27 follows:

14-28 Sec. 401.2445. STATE FEE. Subject to Section 401.2446, the  
14-29 compact waste disposal facility license holder each quarter shall  
14-30 transfer to the state general revenue fund five percent of the gross  
14-31 receipts from:

14-32 (1) compact waste received at the compact waste  
14-33 disposal facility; and  
14-34 (2) any federal facility waste received at a federal  
14-35 facility waste disposal facility licensed under Section 401.216.

14-36 Sec. 401.2446. COMPETITIVE ADJUSTMENTS FOR STATE FEE AND  
14-37 HOST COUNTY PUBLIC PROJECT FEES. (a) The department periodically  
14-38 shall review the host county and state fees and similar fees or  
14-39 charges imposed on all comparable, privately operated low-level  
14-40 radioactive waste disposal facilities in operation in the United  
14-41 States and shall determine the highest combined rate of host county  
14-42 and state fees and similar fees or charges.

14-43 (b) The department shall set the combined rate of surcharges  
14-44 imposed on gross receipts under Sections 401.244 and 401.2445 to be  
14-45 the lower of:

14-46 (1) 10 percent; or  
14-47 (2) a rate equal to the sum of the highest combined  
14-48 rate determined under Subsection (a) and 2.5 percent.

14-49 (c) If the department reduces the surcharges imposed under  
14-50 Sections 401.244 and 401.2445, those reductions shall be on a pro  
14-51 rata basis between the two surcharges.

14-52 SECTION 10. Section 402.219, Health and Safety Code, is  
14-53 transferred to Subchapter F, Chapter 401, Health and Safety Code,  
14-54 renumbered as Section 401.248, and amended to read as follows:

14-55 Sec. 401.248 [402.219]. LIMITATIONS ON LOW-LEVEL  
14-56 RADIOACTIVE WASTE DISPOSAL. (a) [Except as provided by an  
14-57 interstate compact, a disposal site may accept only low-level  
14-58 radioactive waste that is generated in this state.

14-59 ~~[(b)]~~ The board by rule shall exclude from a disposal  
14-60 facility [site] certain types of low-level radioactive waste that  
14-61 are incompatible with disposal operations.

14-62 (b) ~~[(c)]~~ The state may enter into compacts with another  
14-63 state or several states for the disposal in this state of low-level  
14-64 radioactive waste only if the compact:

14-65 (1) limits the total volume of all low-level  
14-66 radioactive waste to be disposed of in this state from the other  
14-67 state or states to 20 percent of the annual average of low-level  
14-68 radioactive waste that the governor projects will be produced in  
14-69 this state from the years 1995 through 2045;

15-1 (2) gives this state full administrative control over  
 15-2 management and operation of the compact waste disposal facility  
 15-3 [site];

15-4 (3) requires the other state or states to join this  
 15-5 state in any legal action necessary to prevent states that are not  
 15-6 members of the compact from disposing of low-level radioactive  
 15-7 waste at the compact waste disposal facility [site];

15-8 (4) allows this state to charge a fee for the disposal  
 15-9 of low-level radioactive waste at the compact waste disposal  
 15-10 facility [site];

15-11 (5) requires the other state or states to join in any  
 15-12 legal action involving liability from the compact waste disposal  
 15-13 facility [site];

15-14 (6) requires the other state or states to share the  
 15-15 full cost of constructing the compact waste disposal facility  
 15-16 [site];

15-17 (7) allows this state to regulate, in accordance with  
 15-18 federal law, the means and routes of transportation of the  
 15-19 low-level radioactive waste in this state;

15-20 (8) requires the other state or states to pay for  
 15-21 community assistance projects selected by the host county in an  
 15-22 amount not less than \$1 million or 10 percent of the amount  
 15-23 contributed by the other state or states;

15-24 (9) is agreed to by the Texas Legislature, the  
 15-25 legislature of the other state or states, and the United States  
 15-26 Congress; and

15-27 (10) complies with all applicable federal law.

15-28 (c) [~~d~~] This section does not affect the ability of this  
 15-29 state to transfer low-level radioactive waste to another state.

15-30 (d) [~~e~~] If this state enters into a compact with another  
 15-31 state and the terms of the compact conflict with this section, the  
 15-32 terms of the compact control.

15-33 SECTION 11. Sections 402.272, 402.273, and 402.276, Health  
 15-34 and Safety Code, are transferred to Subchapter F, Chapter 401,  
 15-35 Health and Safety Code, renumbered as Sections 401.245, 401.246,  
 15-36 and 401.247, and amended to read as follows:

15-37 Sec. 401.245 [~~402.272~~]. COMPACT WASTE DISPOSAL FEES. (a)  
 15-38 A compact waste disposal facility license holder who receives  
 15-39 low-level radioactive waste for disposal pursuant to the Texas  
 15-40 Low-Level Radioactive Waste Disposal Compact established under  
 15-41 Chapter 403 [~~The board~~] shall have collected a waste disposal fee  
 15-42 to be paid by each person who delivers low-level radioactive waste  
 15-43 to the compact waste disposal facility [~~authority~~] for disposal.

15-44 (b) The board by rule shall adopt and periodically revise  
 15-45 compact waste disposal fees according to a schedule that is based on  
 15-46 the projected annual volume of low-level radioactive waste  
 15-47 received, the relative hazard presented by each type of low-level  
 15-48 radioactive waste that is generated by the users of radioactive  
 15-49 materials, and the costs identified in Section 401.246 [~~402.273~~].

15-50 (c) In determining relative hazard, the board shall  
 15-51 consider the radioactive, physical, and chemical properties of each  
 15-52 type of low-level radioactive waste.

15-53 (d) Rules adopted under this section may include provisions  
 15-54 establishing:

15-55 (1) classification of customers and services; and

15-56 (2) applicability of fees.

15-57 (e) Fees adopted under this section must be consistent with  
 15-58 the criteria listed under Section 401.246.

15-59 (f) A rule or order adopted by the department under this  
 15-60 section may not conflict with a ruling of a federal regulatory body.

15-61 Sec. 401.246 [~~402.273~~]. WASTE DISPOSAL FEE CRITERIA. (a)  
 15-62 Compact waste [~~Waste~~] disposal fees adopted by the board must be  
 15-63 sufficient to:

15-64 (1) allow the compact waste facility license holder  
 15-65 [~~authority~~] to recover costs of operating and maintaining the  
 15-66 compact waste disposal facility and a reasonable profit on the  
 15-67 operation of that facility [~~maintenance costs~~];

15-68 (2) provide an amount necessary to meet future costs  
 15-69 of decommissioning, closing, and postclosure maintenance and

16-1 surveillance of the compact waste disposal facility and the compact  
16-2 waste disposal facility portion of the disposal facility site;

16-3 (3) provide an amount to fund local public projects  
16-4 under Section 401.244 [Subchapter I];

16-5 (4) provide a reasonable rate of return on capital  
16-6 investment in the facilities used for management or disposal of  
16-7 compact waste at the compact waste disposal facility; and [~~an~~  
16-8 ~~amount sufficient to fund, in whole or in part, a rangeland and~~  
16-9 ~~wildlife management plan;~~]

16-10 (5) provide an amount necessary to pay compact waste  
16-11 disposal facility licensing fees, to pay compact waste disposal  
16-12 facility fees set by rule or statute, and to provide security for  
16-13 the compact waste disposal facility as required by the department  
16-14 [~~commission~~] under law and department [~~commission~~] rules[~~, and~~

16-15 [~~(6) provide an amount necessary to fund debt service~~  
16-16 ~~and necessary fees and charges, including insurance premiums and~~  
16-17 ~~similar costs, associated with the issuance and payment of bonds~~  
16-18 ~~under Subchapter K].~~

16-19 (b) To the extent practicable, the department shall use the  
16-20 methods used by the Public Utility Commission of Texas under  
16-21 Sections 36.051, 36.052, and 36.053, Utilities Code, when  
16-22 establishing overall revenues, reasonable return, and invested  
16-23 capital for the purpose of setting fees under Subsection (a). [~~This~~  
16-24 ~~subsection applies only if the authority does not issue bonds under~~  
16-25 ~~Subchapter K. The waste disposal fees must also include an amount~~  
16-26 ~~sufficient to allow the authority to recover expenses incurred~~  
16-27 ~~before beginning operation of the disposal site amortized over a~~  
16-28 ~~period of not more than 20 years beginning on the first day of~~  
16-29 ~~operation of the disposal site. The fees must be sufficient to~~  
16-30 ~~recover the depository interest that the general revenue fund would~~  
16-31 ~~have earned had the fund not been used to pay expenses incurred~~  
16-32 ~~before the disposal site begins operation. Depository interest~~  
16-33 ~~recovered under this subsection shall be deposited to the credit of~~  
16-34 ~~the general revenue fund. Principal recovered under this~~  
16-35 ~~subsection shall be deposited to the credit of the general revenue~~  
16-36 ~~fund until the amount deposited has fully reimbursed the fund for~~  
16-37 ~~expenses paid from the fund before the disposal site begins~~  
16-38 ~~operation. The remainder of the principal shall be deposited as~~  
16-39 ~~provided by Section 402.272(a).~~

16-40 [~~(c) The amount required by Subsection (a)(3) may not be~~  
16-41 ~~less than 10 percent of the annual gross receipts from waste~~  
16-42 ~~received at the disposal site.]~~

16-43 Sec. 401.247 [402.276]. REASONABLE AND NECESSARY EXPENSES.  
16-44 Fees paid under this subchapter are reasonable and necessary  
16-45 expenses for ratemaking purposes.

16-46 SECTION 12. Section 402.275, Health and Safety Code, is  
16-47 transferred to Subchapter F, Chapter 401, Health and Safety Code,  
16-48 renumbered as Section 401.249, and amended to read as follows:

16-49 Sec. 401.249 [402.275]. LOW-LEVEL RADIOACTIVE WASTE FUND.  
16-50 (a) The low-level radioactive waste fund is in the state treasury.

16-51 (b) The low-level radioactive waste fund is an  
16-52 interest-bearing fund. Interest earned on money in the fund shall  
16-53 be deposited to the credit of the fund.

16-54 (c) Except as otherwise provided by this chapter, money  
16-55 [~~Money received by the authority, including waste disposal fees,~~  
16-56 ~~planning and implementation fees, surcharges on planning and~~  
16-57 ~~implementation fees, processing and packaging fees, civil~~  
16-58 ~~penalties, payments made by a party state to a low-level~~  
16-59 ~~radioactive waste compact entered into under Section 402.219(c),~~  
16-60 ~~and other receipts] collected by the department [authority] under  
16-61 this chapter shall be deposited to the credit of the low-level  
16-62 radioactive waste fund.~~

16-63 [~~(d) Except as provided by Subsection (f), money in the~~  
16-64 ~~low-level radioactive waste fund may be used to pay:~~

16-65 (1) operating and maintenance costs of the authority;

16-66 (2) future costs of decommissioning, closing, and  
16-67 postclosure maintenance and surveillance of the disposal site;

16-68 (3) licensing fees and to provide security required  
16-69 by the commission;



17-1 ~~[(4) money judgments rendered against the authority~~  
17-2 ~~that are directed by a court of this state to be paid from this fund,~~

17-3 ~~[(5) expenses associated with implementation of the~~  
17-4 ~~rangeland and wildlife management plan,~~

17-5 ~~[(6) funds for local public projects under Subchapter~~  
17-6 ~~I,~~

17-7 ~~[(7) debt service and necessary fees and charges,~~  
17-8 ~~including insurance premiums and similar costs, associated with the~~  
17-9 ~~issuance and payment of bonds under Subchapter K, and~~

17-10 ~~[(8) expenses for any other purpose under this~~  
17-11 ~~chapter.~~

17-12 ~~[(e) A payment for debt service and related costs under~~  
17-13 ~~Subsection (d)(7) has priority for payment from the low-level~~  
17-14 ~~radioactive waste fund over a payment for another expense~~  
17-15 ~~authorized by Subsection (d).~~

17-16 ~~[(f) The authority may transfer money from the low-level~~  
17-17 ~~radioactive waste fund to the radiation and perpetual care fund to~~  
17-18 ~~make payments required by the commission under Section 401.303.]~~

17-19 SECTION 13. Subchapter F, Chapter 401, Health and Safety  
17-20 Code, is amended by adding Section 401.250 to read as follows:

17-21 Sec. 401.250. PAYMENTS BY PARTY STATES. (a)  
17-22 Notwithstanding any other provision of law, Act of the legislature  
17-23 or the executive branch, or any other agreement, the initial  
17-24 payment of \$12.5 million due from each nonhost party state under  
17-25 Section 5.01 of the compact established under Section 403.006 is  
17-26 due not later than November 1, 2003.

17-27 (b) This section prevails over any other law or agreement in  
17-28 conflict or inconsistent with this section.

17-29 (c) All payments made by a party state under Section 5.01 of  
17-30 the compact established under Section 403.006 shall be deposited to  
17-31 the credit of the general revenue fund.

17-32 SECTION 14. Section 401.270(e), Health and Safety Code, is  
17-33 amended to read as follows:

17-34 (e) The department shall use the security provided by the  
17-35 license holder to pay the costs of actions that are taken or that  
17-36 are to be taken under this section. The department shall send to  
17-37 the comptroller a copy of its order together with necessary written  
17-38 requests authorizing the comptroller to:

- 17-39 (1) enforce security supplied by the licensee;
- 17-40 (2) convert an amount of security into cash, as  
17-41 necessary; and

17-42 (3) disburse from the security in the perpetual care  
17-43 account ~~[fund]~~ the amount necessary to pay the costs.

17-44 SECTION 15. Section 401.301(b), Health and Safety Code, is  
17-45 amended to read as follows:

17-46 (b) The board by rule shall set the fee in an amount that may  
17-47 not exceed the actual expenses annually incurred to:

- 17-48 (1) process applications for licenses or  
17-49 registrations;
- 17-50 (2) amend or renew licenses or registrations;
- 17-51 (3) make inspections of license holders and  
17-52 registrants; and

17-53 (4) enforce this chapter and rules, orders, licenses,  
17-54 and registrations under this chapter ~~[, and~~

17-55 ~~[(5) collect payments to the low-level radioactive~~  
17-56 ~~waste fund and general revenue as provided by Section 402.2721].~~

17-57 SECTION 16. Section 401.301(d), Health and Safety Code, is  
17-58 amended to read as follows:

17-59 (d) The department may require that each person who holds a  
17-60 specific license issued by the department annually pay to the  
17-61 department an additional five percent of the appropriate annual fee  
17-62 set under Subsection (b). Fees collected under this subsection  
17-63 shall be deposited to the credit of the ~~[radiation and]~~ perpetual  
17-64 care account ~~[fund]~~. The fees are not refundable.

17-65 SECTION 17. Section 401.303(g), Health and Safety Code, is  
17-66 amended to read as follows:

17-67 (g) If a license holder satisfies the obligations under this  
17-68 chapter, the issuing agency shall have the comptroller promptly  
17-69 refund to the license holder from the perpetual care account ~~[fund]~~

18-1 the excess of the amount of all payments made by the license holder  
 18-2 to the issuing agency and the investment earnings of those payments  
 18-3 over the amount determined to be required for the continuing  
 18-4 maintenance and surveillance of land, buildings, and radioactive  
 18-5 material conveyed to the state.

18-6 SECTION 18. Section 401.305, Health and Safety Code, is  
 18-7 amended to read as follows:

18-8 Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT [~~FUND~~].

18-9 (a) The radiation and perpetual care account is an account in the  
 18-10 general revenue fund [~~is in the state treasury~~].

18-11 (b) The department and commission each shall deposit to the  
 18-12 credit of the perpetual care account [~~fund~~] money and security they  
 18-13 receive under this chapter, including an administrative penalty  
 18-14 collected by the department under Sections 401.384-401.390 but  
 18-15 excluding fees collected under Sections 401.301(a)-(c) and  
 18-16 401.302. Interest earned on money in the perpetual care account  
 18-17 [~~fund~~] shall be credited to the perpetual care account [~~fund~~].

18-18 (c) Money and security in the perpetual care account [~~fund~~]  
 18-19 may be administered by the department or commission only for the  
 18-20 decontamination, decommissioning, stabilization, reclamation,  
 18-21 maintenance, surveillance, control, storage, and disposal of  
 18-22 radioactive material for the protection of the public health and  
 18-23 safety and the environment under this chapter and for refunds under  
 18-24 Section 401.303.

18-25 (d) Money and security in the perpetual care account [~~fund~~]  
 18-26 may not be used for normal operating expenses of the department or  
 18-27 commission.

18-28 (e) The department may use money in the perpetual care  
 18-29 account [~~fund~~] to pay for measures:

18-30 (1) to prevent or mitigate the adverse effects of  
 18-31 abandonment of radioactive materials, default on a lawful  
 18-32 obligation, insolvency, or other inability by the holder of a  
 18-33 license issued by the department to meet the requirements of this  
 18-34 chapter or department rules; and

18-35 (2) to assure the protection of the public health and  
 18-36 safety and the environment from the adverse effects of ionizing  
 18-37 radiation.

18-38 (f) The department may provide, by the terms of a contract  
 18-39 or lease entered into between the department and any person or by  
 18-40 the terms of a license issued by the department to any person, for  
 18-41 the decontamination, closure, decommissioning, reclamation,  
 18-42 surveillance, or other care of a site or facility subject to  
 18-43 department jurisdiction under this chapter as needed to carry out  
 18-44 the purpose of this chapter.

18-45 (g) The existence of the [~~radiation and~~] perpetual care  
 18-46 account [~~fund~~] does not make the department liable for the costs of  
 18-47 decontamination, transfer, transportation, reclamation,  
 18-48 surveillance, or disposal of radioactive material arising from a  
 18-49 license holder's abandonment of radioactive material, default on a  
 18-50 lawful obligation, insolvency, or inability to meet the  
 18-51 requirements of this chapter or department rules.

18-52 SECTION 19. Section 401.342(b), Health and Safety Code, is  
 18-53 amended to read as follows:

18-54 (b) The attorney general may petition the court for:

18-55 (1) an order enjoining the act or practice or an order  
 18-56 directing compliance and reimbursement of the perpetual care  
 18-57 account [~~fund~~], if applicable;

18-58 (2) civil penalties as provided by Section 401.381; or

18-59 (3) a permanent or temporary injunction, restraining  
 18-60 order, or other appropriate order if the department shows that the  
 18-61 person engaged in or is about to engage in any of the acts or  
 18-62 practices.

18-63 SECTION 20. Section 401.343(a), Health and Safety Code, is  
 18-64 amended to read as follows:

18-65 (a) The department shall seek reimbursement, either by an  
 18-66 order of the department or a suit filed by the attorney general at  
 18-67 the department's request, of security from the perpetual care  
 18-68 account [~~fund~~] used by the department to pay for actions, including  
 18-69 corrective measures, to remedy spills or contamination by

19-1 radioactive material resulting from a violation of this chapter  
19-2 relating to an activity under the department's jurisdiction or a  
19-3 rule, license, registration, or order adopted or issued by the  
19-4 department under this chapter.

19-5 SECTION 21. Section 403.001(a), Health and Safety Code, is  
19-6 amended to read as follows:

19-7 (a) The governor shall appoint six members to represent this  
19-8 state on the commission established by Article III of the Texas  
19-9 Low-Level Radioactive Waste Disposal Compact. One of the voting  
19-10 members of the compact commission shall be a legal resident of the  
19-11 host county [~~Hudspeth County, Texas~~].

19-12 SECTION 22. Section 5.013(a), Water Code, is amended to  
19-13 read as follows:

19-14 (a) The commission has general jurisdiction over:

19-15 (1) water and water rights including the issuance of  
19-16 water rights permits, water rights adjudication, cancellation of  
19-17 water rights, and enforcement of water rights;

19-18 (2) continuing supervision over districts created  
19-19 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
19-20 Section 59, of the Texas Constitution;

19-21 (3) the state's water quality program including  
19-22 issuance of permits, enforcement of water quality rules, standards,  
19-23 orders, and permits, and water quality planning;

19-24 (4) the determination of the feasibility of certain  
19-25 federal projects;

19-26 (5) the adoption and enforcement of rules and  
19-27 performance of other acts relating to the safe construction,  
19-28 maintenance, and removal of dams;

19-29 (6) conduct of the state's hazardous spill prevention  
19-30 and control program;

19-31 (7) the administration of the state's program relating  
19-32 to inactive hazardous substance, pollutant, and contaminant  
19-33 disposal facilities;

19-34 (8) the administration of a portion of the state's  
19-35 injection well program;

19-36 (9) the administration of the state's programs  
19-37 involving underground water and water wells and drilled and mined  
19-38 shafts;

19-39 (10) the state's responsibilities relating to regional  
19-40 waste disposal;

19-41 (11) the responsibilities assigned to the commission  
19-42 by Chapters 361, 363, 382, and 401, [~~and 402,~~] Health and Safety  
19-43 Code;

19-44 (12) the administration of the national flood  
19-45 insurance program;

19-46 (13) administration of the state's water rate program  
19-47 under Chapter 13 of this code; and

19-48 (14) any other areas assigned to the commission by  
19-49 this code and other laws of this state.

19-50 SECTION 23. Section 7.033, Water Code, is amended to read as  
19-51 follows:

19-52 Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH  
19-53 AND SAFETY CODE, VIOLATION. The commission shall seek  
19-54 reimbursement, either by a commission order or by a suit filed under  
19-55 Subchapter D by the attorney general at the commission's request,  
19-56 of security from the radiation and perpetual care account [~~fund~~]  
19-57 used by the commission to pay for actions, including corrective  
19-58 measures, to remedy spills or contamination by radioactive material  
19-59 resulting from a violation of Chapter 401, Health and Safety Code,  
19-60 relating to an activity under the commission's jurisdiction or a  
19-61 rule adopted or a license, registration, or order issued by the  
19-62 commission under that chapter.

19-63 SECTION 24. Sections 401.153 and 401.306, Health and Safety  
19-64 Code, Chapter 402, Health and Safety Code, and Section 51.0511,  
19-65 Natural Resources Code, are repealed.

19-66 SECTION 25. This Act prevails to the extent of a conflict  
19-67 between this Act and any other Act of the 78th Legislature, Regular  
19-68 Session, 2003, dealing with the organization, powers, and duties of  
19-69 the Texas Department of Health, particularly with regard to:

- 20-1 (1) application processing and licensing;
- 20-2 (2) judicial review of an application;
- 20-3 (3) facility siting;
- 20-4 (4) fee schedules;
- 20-5 (5) financial security;
- 20-6 (6) site monitoring;
- 20-7 (7) term of license and renewal; and
- 20-8 (8) the operation and maintenance of a low-level
- 20-9 radioactive waste disposal site in Texas.

20-10 SECTION 26. This Act takes effect immediately if it  
20-11 receives a vote of two-thirds of all the members elected to each  
20-12 house, as provided by Section 39, Article III, Texas Constitution.  
20-13 If this Act does not receive the vote necessary for immediate  
20-14 effect, this Act takes effect September 1, 2003.

20-15 \* \* \* \* \*