

By: Bivins

S.B. No. 824

A BILL TO BE ENTITLED

AN ACT

relating to the disposal of low-level radioactive waste.

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

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

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

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

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

(B) shall be collected by the low-level radioactive waste disposal license holder [~~authority~~] and remitted to the department for deposit [~~deposited~~] to the credit of the radiation and perpetual care fund; and

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

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

1 shall be reinstated to bring the balance of fees collected to  
2 \$500,000.

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

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

9 SECTION 2. Section 401.104(b), Health and Safety Code, is  
10 amended to read as follows:

11 (b) Except as provided by Subsection (e), the commission by  
12 rule shall provide for licensing for the disposal of radioactive  
13 material except for the disposal of by-product material defined by  
14 Section 401.003(3)(B) and the disposal of low-level radioactive  
15 waste under Subchapter F. The department by rule shall provide for  
16 licensing the disposal of by-product material defined by Section  
17 401.003(3)(B).

18 SECTION 3. Section 401.106(a), Health and Safety Code, is  
19 amended to read as follows:

20 (a) The board by rule or the department on a case-by-case  
21 basis may exempt a source of radiation or a kind of use or user from  
22 the licensing or registration requirements provided by this chapter  
23 if the board or department finds that the exemption of that source  
24 of radiation or kind of use or user will not constitute a  
25 significant risk to the public health and safety and the  
26 environment.

27 SECTION 4. Section 401.153(b), Health and Safety Code, is

1 amended to read as follows:

2 (b) A rule adopted under this section may not take effect  
3 before the 24th month preceding the opening date of a low-level  
4 radioactive waste disposal site authorized under Subchapter F  
5 [~~Chapter 402,~~] and expires on the date [~~that~~] the disposal site  
6 opens.

7 SECTION 5. Subchapter F, Chapter 401, Health and Safety  
8 Code, is amended to read as follows:

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

11 Sec. 401.2005. DEFINITIONS. In this subchapter:

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

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

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

20 (2) "Disposal facility" means the low-level  
21 radioactive waste disposal facility licensed by the department  
22 under this subchapter.

23 (3) "Federal facility waste" means low-level  
24 radioactive waste that is the responsibility of the federal  
25 government under the Low-Level Radioactive Waste Policy Act, as  
26 amended by the Low-Level Radioactive Waste Policy Amendments Act of  
27 1985 (42 U.S.C. Sections 2021b-2021j).

1           (4) "Host state" has the meaning assigned by Section  
2 2.01 of the compact established under Section 403.006.

3           (5) "Party state" has the meaning assigned by Section  
4 2.01 of the compact established under Section 403.006.

5           Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE  
6 DISPOSAL. The department [~~commission~~] shall directly regulate the  
7 disposal of low-level radioactive waste in accordance with this  
8 subchapter. The person making the disposal shall comply with this  
9 subchapter and department [~~commission~~] rules.

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

15           (b) The department shall receive applications for and may  
16 issue not more than one license for a low-level radioactive waste  
17 disposal facility. The department may issue the license only for a  
18 facility that meets:

19           (1) requirements for licensing provided by this  
20 subchapter and by department rules; and

21           (2) requirements for disposal adopted by the  
22 department that are as stringent as necessary to meet federal  
23 requirements for disposal.

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

27           ~~[Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. A~~

1 ~~low-level radioactive waste disposal license may be issued only to~~  
2 ~~a public entity specifically authorized by law for low-level~~  
3 ~~radioactive waste disposal.]~~

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

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

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

16           (2) convey to the state when the license is issued all  
17 necessary right, title, and interest in land and buildings acquired  
18 under department [~~commission~~] rules, together with requisite  
19 rights of access to that property; and

20           (3) formally acknowledge before termination of the  
21 license the conveyance to the state of the right, title, and  
22 interest in low-level radioactive waste located on the property  
23 conveyed.

24       (b) The disposal facility license holder, if authorized  
25 under Section 401.216 to dispose of federal facility waste, shall:

26           (1) arrange for and pay the costs of management,  
27 control, stabilization, and disposal of federal facility waste and

1 the decommissioning of the authorized federal facility waste  
2 disposal activity;

3 (2) on decommissioning of the authorized federal  
4 facility waste disposal activity, convey to the federal government  
5 or its designee, as provided by the federal Nuclear Waste Policy Act  
6 of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended,  
7 all necessary right, title, and interest in land and buildings  
8 acquired under department rules, together with requisite rights of  
9 access to that property; and

10 (3) formally acknowledge before termination of the  
11 authorization the conveyance to the federal government or its  
12 designee of the right, title, and interest in radioactive waste  
13 located on the property conveyed.

14 Sec. 401.2051. CONVEYANCE OF WASTE. (a) The disposal  
15 facility license holder shall convey to the state at no cost to the  
16 state title to the compact waste delivered to the disposal facility  
17 for disposal at the time the waste is accepted at the site. This  
18 section does not apply to federal facility waste accepted at a  
19 disposal facility authorized under Section 401.216 to dispose of  
20 federal facility waste.

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

25 Sec. 401.206. RESIDENT INSPECTOR. (a) The disposal  
26 facility license holder [~~of a license to dispose of low-level~~  
27 ~~radioactive waste from other persons~~] shall reimburse the

1 department [~~commission~~] for the salary and other expenses of a  
2 resident inspector employed by the department [~~commission~~].

3 (b) The department [~~commission~~] may require that the  
4 disposal facility license holder provide facilities at the [~~a~~]  
5 disposal site for the resident inspector.

6 Sec. 401.207. OUT-OF-STATE WASTE. The disposal facility  
7 [~~A~~] license holder may not accept low-level radioactive waste  
8 generated in another state for [~~processing or~~] disposal under a  
9 license issued by the department unless the waste [~~is~~]:

10 (1) is accepted under a compact to which the state is a  
11 contracting party;

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

15 (3) is generated from manufactured sources or devices  
16 originating in this state; or

17 (4) is federal facility waste disposed of under an  
18 authorization granted under Section 401.216.

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

25 (b) Property acquired under this section may be used only  
26 for disposing of low-level radioactive waste until the department  
27 [~~commission~~] determines that another use would not endanger the

1 health, safety, or general welfare of the public or the  
2 environment.

3 (c) The department [~~commission~~] may lease property acquired  
4 under this section for operating disposal sites for low-level  
5 radioactive waste.

6 (d) The right, title, and interest in low-level radioactive  
7 waste accepted for disposal at property and facilities acquired  
8 under this section and any other interest acquired under this  
9 chapter are the property of the department [~~commission~~], acting on  
10 behalf of the state, and shall be administered and controlled by the  
11 department [~~commission~~] in the name of the state.

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

14 Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level  
15 radioactive waste and land and buildings transferred to the state  
16 or to the federal government under this chapter shall be  
17 transferred to the state or to the federal government without cost,  
18 other than administrative and legal costs incurred in making the  
19 transfer.

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

27 (b) The acceptance, storage, or disposal of low-level

1 radioactive waste by the disposal facility license holder does not  
2 create any liability under state law on the part of the state, or on  
3 the part of any officer or agency of the state, for damages,  
4 removal, or remedial action with respect to the land, the facility,  
5 or the low-level radioactive waste accepted, stored, or disposed  
6 of.

7 (c) The low-level radioactive waste disposal facility  
8 license must require the license holder to indemnify the state for  
9 any liability imposed on the state under state or federal law, as  
10 required by the department.

11 Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY  
12 MEASURES. The department [~~commission~~] may undertake monitoring,  
13 maintenance, and emergency measures that are necessary to protect  
14 the public health and safety and the environment in connection with  
15 low-level radioactive waste and property for which it has assumed  
16 custody.

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

22 Sec. 401.214. REGIONAL DISPOSAL FACILITY. The disposal  
23 facility licensed under this subchapter is the regional disposal  
24 facility established and operated under the compact established  
25 under Chapter 403 for purposes of the federal Low-Level Radioactive  
26 Waste Policy Act, as amended by the Low-Level Radioactive Waste  
27 Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

1       Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE.

2       Subject to limitations provided by Sections 401.207 and 401.245,  
3       the disposal facility shall accept for disposal all compact waste  
4       that is presented to it and that is properly processed and packaged.

5       Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The

6       department may authorize the disposal facility license holder to  
7       dispose of federal facility waste. The department may authorize  
8       federal facility waste disposal only at a separate and distinct  
9       facility adjacent to the facility at which compact waste is  
10       disposed of.

11       (b) The department may restrict the amount and type of

12       federal facility waste the license holder may accept at the  
13       separate adjacent facility. The restrictions must be based on the  
14       performance objective established by 10 C.F.R. Section 61.41.

15       (c) The department may not allow commingling of compact

16       waste and federal facility waste.

17       Sec. 401.217. LOCATION OF LOW-LEVEL RADIOACTIVE WASTE

18       DISPOSAL SITE. The department may not issue a license for a  
19       low-level radioactive waste disposal facility located:

20               (1) in a county that is contiguous with an  
21       international boundary;

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

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

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

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

3           (A) has been constructed or is under construction  
4 by the United States Bureau of Reclamation or the United States Army  
5 Corps of Engineers; or

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

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

13           (b) The disposal facility license holder shall dispose of  
14 Class B low-level radioactive waste and Class C low-level  
15 radioactive waste:

16           (1) within a reinforced concrete barrier or within  
17 containment structures made of materials technologically  
18 equivalent or superior to reinforced concrete; and

19           (2) in such a manner that the waste can be monitored  
20 and retrieved.

21           Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL  
22 RADIOACTIVE WASTE. (a) As a condition for obtaining a disposal  
23 facility license, an applicant must submit to the department or its  
24 designee evidence relating to the reasonableness of any technique  
25 for managing low-level radioactive waste to be practiced at the  
26 proposed disposal facility.

27           (b) Before determining the techniques to be used for

1 managing low-level radioactive waste, an applicant shall study  
2 alternative techniques, including:

3 (1) waste processing and reduction at the site of  
4 waste generation and at the disposal facility; and

5 (2) the use of aboveground isolation facilities.

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

11 Sec. 401.221. MIXED WASTE. (a) In this section, "mixed  
12 waste" means a combination of hazardous waste as defined by Chapter  
13 361 and low-level radioactive waste.

14 (b) The disposal facility license holder in accepting mixed  
15 waste at the disposal facility shall comply with Chapter 361, the  
16 Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section  
17 6901 et seq.), as amended, and this chapter.

18 Sec. 401.222. TERM OF LICENSE. The disposal facility  
19 license issued under this subchapter expires on the 35th  
20 anniversary of its date of issuance.

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

25 Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The  
26 department shall adopt rules relating to the packaging of  
27 radioactive waste.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a)

On arrival of a shipment of low-level radioactive waste at the disposal facility, the disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the disposal facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the disposal facility license holder written notice of the shipment at least 72 hours before shipment to the disposal facility begins. The written notice must contain information required by the board.

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

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

Sec. 401.227. SELECTION OF APPLICATION FOR DISPOSAL FACILITY LICENSE. (a) In selecting an application for the disposal facility license, the department and commissioner shall proceed as

1 follows:

2 (1) The department shall issue notice of the  
3 opportunity to submit an application to dispose of low-level  
4 radioactive waste in accordance with Section 401.228.

5 (2) The commissioner shall review all applications  
6 received under Subdivision (1) for administrative completeness.

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

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

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

20 Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later  
21 than October 1, 2003, 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  
26 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 commissioner's discretion;

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

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

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

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

13 Sec. 401.229. COMMITMENT FEE. (a) An application for a  
14 low-level radioactive waste disposal license must include payment  
15 to the department of a commitment fee of \$500,000. The department  
16 may not review an application for administrative completeness until  
17 the department receives the commitment fee. The commitment fee is  
18 nonrefundable.

19 (b) In the event that the application processing fees as  
20 determined by the commissioner exceed the amount of the commitment  
21 fee, the commitment fee shall be credited by the commissioner to an  
22 applicant's payment of the application processing fees.

23 Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day  
24 period beginning 180 days after the date notice is published under  
25 Section 401.228, the department shall accept applications for the  
26 disposal of low-level radioactive waste.

27 (b) Not later than the 45th day after the date an

1 application is received, the commissioner shall issue an  
2 administrative notice of deficiency to each applicant whose  
3 application is timely submitted but is determined by the  
4 commissioner to be administratively incomplete.

5 (c) The department shall provide an applicant for whom an  
6 administrative notice of deficiency is issued not more than three  
7 opportunities to cure the noted deficiencies in the application not  
8 later than the 90th day after the date the first notice of  
9 deficiency is issued.

10 (d) The commissioner shall reject any application that,  
11 after the period for correcting deficiencies has expired, is not  
12 administratively complete.

13 Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The  
14 department shall consider as administratively complete an  
15 application for which the department has received the portions of  
16 the application necessary to allow the department to review the  
17 technical merits of the application, including:

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

19 (2) a description of the proposed disposal facility  
20 and disposal facility site;

21 (3) a description of the character of the proposed  
22 activities and the types and quantities of waste to be managed at  
23 the disposal facility;

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

26 (5) a description of the financial assurance mechanism  
27 to be used;

1           (6) a description of the design features of the  
2 facility, along with a description of the methods of construction  
3 and operation of the facility;

4           (7) a characterization of the area and site  
5 characteristics, including ecology, geology, soils, hydrology,  
6 natural radiation background, climatology, meteorology,  
7 demography, and current land uses;

8           (8) a description of the safety programs to be used at  
9 the proposed facility;

10           (9) a copy of the warranty deed or other conveyance  
11 showing necessary right, title, and interest in the land and  
12 buildings on which the facility is proposed to be located is owned  
13 in fee by the applicant;

14           (10) a commitment fee in the amount of \$500,000 in  
15 accordance with Section 401.229 and proof of additional funds  
16 sufficient to cover any further costs of processing the application  
17 as estimated by the commissioner; and

18           (11) a copy of a resolution of support of the proposed  
19 facility from the commissioners court of the county in which the  
20 facility is proposed to be located.

21           Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSIONER  
22 SELECTION. (a) The commissioner shall have prepared by department  
23 personnel or an independent contractor a written evaluation of each  
24 administratively complete application in terms of the criteria  
25 established under Sections 401.233-401.236.

26           (b) The commissioner shall conduct at least one public  
27 meeting in each county, as applicable, to receive public comments

1 on the administratively complete applications. The commissioner  
2 shall set the time and place of the meetings as soon as practicable  
3 after the close of the period for administrative review of the  
4 applications.

5 (c) The commissioner may issue a request for further  
6 information to each applicant whose application is determined by  
7 the commissioner to be insufficient for the purposes of the  
8 commissioner's evaluation.

9 (d) The commissioner shall provide an applicant for whom a  
10 request for further information is issued two opportunities to  
11 adequately respond in the discretion of the commissioner not later  
12 than the 60th day after the date the request for further information  
13 is issued.

14 (e) The commissioner shall use the written evaluations and  
15 application materials to evaluate each application according to the  
16 statutory criteria established by Sections 401.233-401.236. The  
17 commissioner shall evaluate each application for each statutory  
18 criterion for purposes of comparing the relative merit of the  
19 applications, giving:

20 (1) equal weight to each criterion within a tier of  
21 criteria; and

22 (2) the greatest weight to tier 1 criteria, greater  
23 weight to tier 2 criteria than to tier 3 criteria, and the least  
24 weight to tier 4 criteria.

25 (f) The commissioner, based on the written evaluations and  
26 application materials, shall select the application that has the  
27 highest comparative merit.

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

3           (1) the natural characteristics of the site for a  
4 proposed disposal facility;

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

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

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

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

13                   (A) geological characteristics;

14                   (B) topography, including features relating to  
15 erosion;

16                   (C) surface and underground hydrology;

17                   (D) meteorological factors; and

18                   (E) natural hazards;

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

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

27                   (A) natural background radioactivity levels;

1                   (B) radon gas levels;

2                   (C) air particulate levels;

3                   (D) soil characteristics, including chemical  
4 characteristics;

5                   (E) surface water and groundwater  
6 characteristics; and

7                   (F) flora and fauna at the site;

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

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

11                   (c) Adequacy of the proposed disposal facility and  
12 activities includes:

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

16                   (2) acceptable operational safety; and

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

19                   (d) Financial assurance criteria include:

20                   (1) adequacy of the applicant's financial  
21 qualifications to conduct the licensed activities as proposed,  
22 including any required decontamination, decommissioning,  
23 reclamation, or disposal and control and maintenance of the  
24 disposal site and facility after the cessation of active  
25 operations;

26                   (2) the adequacy of the applicant's financial  
27 assurance in an amount and type acceptable to the department and

1 adequate to cover potential injury to any property or person;

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

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

6 Sec. 401.234. TIER 2 CRITERIA. The commissioner shall  
7 consider as tier 2 criteria:

8 (1) the suitability of facilities at the site that are  
9 associated with proposed activities and the adequacy of their  
10 engineering and design; and

11 (2) the suitability of the proposed disposal facility  
12 for the chemical, radiological, and biological characteristics of  
13 the low-level radioactive waste as classified under the system  
14 established under Section 401.053.

15 Sec. 401.235. TIER 3 CRITERIA. The commissioner shall  
16 consider as tier 3 criteria the applicant's:

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

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

21 (3) previous operating practices in this state and  
22 elsewhere, including the practices of a parent, subsidiary, or  
23 affiliated entity of the applicant, related to radioactive  
24 materials;

25 (4) record of compliance with environmental statutes,  
26 rules, and licenses in this state and in any other jurisdiction,  
27 including the records of a parent or subsidiary of the applicant;

1           (5) training programs proposed for its employees whose  
2 duties relate to the proposed site and activities;

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

4           (7) low-level radioactive waste spill detection and  
5 cleanup plans for the proposed site and activities;

6           (8) decommissioning and postclosure plans;

7           (9) security plans;

8           (10) monitoring and protection plans for workers;

9           (11) emergency plans;

10           (12) plans for background monitoring during the  
11 license period, including analysis of the ambient conditions of the  
12 site and analysis of established trends of the site's natural  
13 parameters, including:

14                   (A) natural background radioactivity levels;

15                   (B) radon gas levels;

16                   (C) air particulate levels;

17                   (D) soil characteristics, including chemical  
18 characteristics;

19                   (E) surface water and groundwater  
20 characteristics; and

21                   (F) flora and fauna at the site; and

22           (13) ability to adequately manage the proposed  
23 disposal facility and activities for the term of the license.

24           Sec. 401.236. TIER 4 CRITERIA. The commissioner shall  
25 consider as tier 4 criteria:

26           (1) the compatibility of uses of land near the  
27 proposed site that could be affected by the construction and

1 operation of the disposal facility; and

2 (2) possible socioeconomic effects of the proposed  
3 disposal facility, its operation, and related transportation of  
4 low-level radioactive waste to the disposal facility on communities  
5 in the host county.

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

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

14 (c) The department shall give priority to the review of the  
15 selected application over all other radioactive materials and waste  
16 licensing and registration matters pending before the department.

17 Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR  
18 HEARING. On completion of the technical review of the selected  
19 application and preparation of the draft license, the commissioner  
20 shall publish, at the applicant's expense, notice of the draft  
21 license and specify the requirements for requesting a contested  
22 case hearing by a person affected. The notice shall include a  
23 statement that the draft license is available for review on the  
24 department's website and that the draft license and the application  
25 materials are available for review at the offices of the department  
26 and in the county in which a site for the proposed disposal facility  
27 is located. Notice shall be published in the Texas Register and in

1 a newspaper of general circulation in each county in which a site  
2 for the proposed disposal facility is located. The applicant shall  
3 mail the notice by certified mail to each person who owns land  
4 adjacent to the site of the proposed disposal facility.

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

6 (a) An administrative law judge of the State Office of  
7 Administrative Hearings shall conduct a contested case hearing on  
8 the application and draft license if:

9 (1) the applicant or a person affected requests a  
10 hearing; and

11 (2) the department refers the issue to the State  
12 Office of Administrative Hearings.

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

16 (c) The department may not refer an issue to the State  
17 Office of Administrative Hearings for a hearing unless:

18 (1) the request complies with department rules and the  
19 notice of draft license published under Section 401.238; and

20 (2) the department determines that the issue:  
21 (A) involves a disputed question of fact; and  
22 (B) is relevant and material to the decision on  
23 the application.

24 (d) If the department grants a request for a contested case  
25 hearing, it shall:

26 (1) limit the number and scope of the issues to be  
27 referred to the State Office of Administrative Hearings for a

1 hearing; and

2 (2) consistent with the nature and number of the  
3 issues to be considered at the hearing, specify the maximum  
4 expected duration of the hearing.

5 (e) The administrative law judge shall issue a proposal for  
6 decision not later than the first anniversary of the publication  
7 date of the notice of draft license published under Section  
8 401.238.

9 (f) The department shall take final action on the proposal  
10 for decision of the administrative law judge not later than the 90th  
11 day after the date the proposal is issued.

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

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

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

24 (2) shall reverse or remand the case for further  
25 proceedings if substantial rights of the petitioner have been  
26 prejudiced because the administrative findings, inferences,  
27 conclusions, or decisions:

1           (A) are in violation of a constitutional or  
2 statutory provision;

3           (B) are in excess of the agency's statutory  
4 authority;

5           (C) are made through unlawful procedure;

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

7           (E) are not reasonably supported by substantial  
8 evidence considering the reliable and probative evidence in the  
9 record as a whole; or

10           (F) are arbitrary or capricious or characterized  
11 by abuse of discretion or clearly unwarranted exercise of  
12 discretion.

13           SECTION 6. Section 402.252, Health and Safety Code, is  
14 transferred to Subchapter F, Chapter 401, Health and Safety Code,  
15 renumbered as Section 401.241, and amended to read as follows:

16           Sec. 401.241 [~~402.252~~]. HOST COUNTY [~~LOCAL~~] PUBLIC  
17 PROJECTS. (a) The disposal facility license holder each quarter  
18 [~~board~~] shall [~~quarterly~~] transfer [~~money in the low-level~~  
19 ~~radioactive waste fund generated by planning and implementation fee~~  
20 ~~surcharges under Sections 402.2721(e) and (f), and that portion of~~  
21 ~~waste disposal fees identifiable as adopted for the purposes of~~  
22 ~~Sections 402.273(a)(3) and (b)] to the commissioners court of the~~  
23 host county 10 percent of the gross receipts from waste received at  
24 the disposal facility and any facility adjacent to the disposal  
25 facility that is authorized under Section 401.216 to receive  
26 federal facility waste.

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

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

3           (2) disburse the money to other local entities or to  
4 public nonprofit corporations to be spent for local public  
5 projects.

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

13           (d) Funds received by the commissioners court of the host  
14 county under this section are not loans or grants-in-aid subject to  
15 review by a regional planning committee under Chapter 391, Local  
16 Government Code. [~~Annually the commissioners court shall provide~~  
17 ~~to the board a detailed accounting of the money held, expended, or~~  
18 ~~disbursed by the county.~~]

19           SECTION 7. Section 402.219, Health and Safety Code, is  
20 transferred to Subchapter F, Chapter 401, Health and Safety Code,  
21 renumbered as Section 401.245, and amended to read as follows:

22           Sec. 401.245 [~~402.219~~].       LIMITATIONS       ON       LOW-LEVEL  
23 RADIOACTIVE WASTE DISPOSAL.   (a) Except as provided by an  
24 interstate compact, a disposal facility [~~site~~] may accept only  
25 low-level radioactive waste that is generated in this state.

26           (b) The board by rule shall exclude from a disposal facility  
27 [~~site~~] certain types of low-level radioactive waste that are

1 incompatible with disposal operations.

2 (c) The state may enter into compacts with another state or  
3 several states for the disposal in this state of low-level  
4 radioactive waste only if the compact:

5 (1) limits the total volume of all low-level  
6 radioactive waste to be disposed of in this state from the other  
7 state or states to 20 percent of the annual average of low-level  
8 radioactive waste that the governor projects will be produced in  
9 this state from the years 1995 through 2045;

10 (2) gives this state full administrative control over  
11 management and operation of the disposal facility [~~site~~];

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

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

18 (5) requires the other state or states to join in any  
19 legal action involving liability from the disposal facility [~~site~~];

20 (6) requires the other state or states to share the  
21 full cost of constructing the disposal facility [~~site~~];

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

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

1 contributed by the other state or states;

2 (9) is agreed to by the Texas Legislature, the  
3 legislature of the other state or states, and the United States  
4 Congress; and

5 (10) complies with all applicable federal law.

6 (d) This section does not affect the ability of this state  
7 to transfer low-level radioactive waste to another state.

8 (e) If this state enters into a compact with another state  
9 and the terms of the compact conflict with this section, the terms  
10 of the compact control.

11 SECTION 8. Sections 402.272, 402.273, and 402.276, Health  
12 and Safety Code, are transferred to Subchapter F, Chapter 401,  
13 Health and Safety Code, renumbered as Sections 401.242, 401.243,  
14 and 401.244, and amended to read as follows:

15 Sec. 401.242 [~~402.272~~]. WASTE DISPOSAL FEES. (a) A  
16 disposal facility license holder who receives low-level  
17 radioactive waste for disposal pursuant to the Texas Low-Level  
18 Radioactive Waste Disposal Compact established under Chapter 403  
19 [The board] shall have collected a waste disposal fee to be paid by  
20 each person who delivers low-level radioactive waste to the  
21 facility [authority] for disposal.

22 (b) An applicant for the disposal facility license shall  
23 submit to the department for review and approval in the application  
24 process a schedule of the proposed waste disposal fees it expects to  
25 collect under this section.

26 (c) The disposal facility license holder [~~board by rule~~]  
27 shall [~~adopt and~~] periodically revise waste disposal fees according

1 to a schedule that is based on the projected annual volume of  
2 low-level radioactive waste received, the relative hazard  
3 presented by each type of low-level radioactive waste that is  
4 generated by the users of radioactive materials, and the costs  
5 identified in Section 401.243 [~~402.273~~].

6 [~~(c)~~] In determining relative hazard, the disposal facility  
7 license holder [~~board~~] shall consider the radioactive, physical,  
8 and chemical properties of each type of low-level radioactive  
9 waste.

10 (d) The disposal facility license holder may request from  
11 the department an amendment to its license as waste disposal fees  
12 are periodically revised.

13 Sec. 401.243 [~~402.273~~]. WASTE DISPOSAL FEE  
14 CRITERIA. [~~(a)~~] Waste disposal fees collected by a disposal  
15 facility license holder who receives low-level radioactive waste  
16 for disposal pursuant to the Texas Low-Level Radioactive Waste  
17 Disposal Compact established under Chapter 403 [~~adopted by the~~  
18 ~~board~~] must be sufficient to:

19 (1) allow the license holder [~~authority~~] to recover  
20 operating and maintenance costs plus a reasonable profit;

21 (2) provide an amount necessary to meet future costs  
22 of decommissioning, closing, and postclosure maintenance and  
23 surveillance of the disposal facility and site;

24 (3) provide an amount to fund local public projects  
25 under Section 401.241 [~~Subchapter I~~];

26 (4) provide a reasonable rate of return on capital  
27 investment in the facilities used for management or disposal of

1 compact waste; and [~~an amount sufficient to fund, in whole or in~~  
2 ~~part, a rangeland and wildlife management plan,~~]

3 (5) provide an amount necessary to pay licensing fees,  
4 to pay fees set by rule or statute, and to provide security required  
5 by the department [~~commission~~] under law and department  
6 [~~commission~~] rules[~~, and~~

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

11 [~~(b) This subsection applies only if the authority does not~~  
12 ~~issue bonds under Subchapter K. The waste disposal fees must also~~  
13 ~~include an amount sufficient to allow the authority to recover~~  
14 ~~expenses incurred before beginning operation of the disposal site~~  
15 ~~amortized over a period of not more than 20 years beginning on the~~  
16 ~~first day of operation of the disposal site. The fees must be~~  
17 ~~sufficient to recover the depository interest that the general~~  
18 ~~revenue fund would have earned had the fund not been used to pay~~  
19 ~~expenses incurred before the disposal site begins operation.~~  
20 ~~Depository interest recovered under this subsection shall be~~  
21 ~~deposited to the credit of the general revenue fund. Principal~~  
22 ~~recovered under this subsection shall be deposited to the credit of~~  
23 ~~the general revenue fund until the amount deposited has fully~~  
24 ~~reimbursed the fund for expenses paid from the fund before the~~  
25 ~~disposal site begins operation. The remainder of the principal~~  
26 ~~shall be deposited as provided by Section 402.272(a).~~

27 [~~(c) The amount required by Subsection (a)(3) may not be~~

1 ~~less than 10 percent of the annual gross receipts from waste~~  
2 ~~received at the disposal site.]~~

3 Sec. 401.244 [~~402.276~~]. REASONABLE AND NECESSARY EXPENSES.  
4 Fees paid under this subchapter are reasonable and necessary  
5 expenses for ratemaking purposes.

6 SECTION 9. Section 401.301(b), Health and Safety Code, is  
7 amended to read as follows:

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

10 (1) process applications for licenses or  
11 registrations;

12 (2) amend or renew licenses or registrations;

13 (3) make inspections of license holders and  
14 registrants; and

15 (4) enforce this chapter and rules, orders, licenses,  
16 and registrations under this chapter[~~, and~~

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

19 SECTION 10. Section 403.001(a), Health and Safety Code, is  
20 amended to read as follows:

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

26 SECTION 11. Section 51.0511, Natural Resources Code, is  
27 amended to read as follows:

1           Sec. 51.0511. SALE OR LEASE OF LAND FOR RADIOACTIVE WASTE  
2 DISPOSAL SITE. Subchapter F [~~F~~], Chapter 401 [402], Health and  
3 Safety Code, regarding the sale or lease of permanent school fund  
4 land for purposes of a disposal site prevails over provisions of  
5 this chapter, Chapters 32, 52, and 53 of this code, and the board's  
6 rules relating to the sale or lease of permanent school fund land to  
7 the extent of any conflict.

8           SECTION 12. Section 5.013(a), Water Code, is amended to  
9 read as follows:

10           (a) The commission has general jurisdiction over:

11                   (1) water and water rights including the issuance of  
12 water rights permits, water rights adjudication, cancellation of  
13 water rights, and enforcement of water rights;

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

17                   (3) the state's water quality program including  
18 issuance of permits, enforcement of water quality rules, standards,  
19 orders, and permits, and water quality planning;

20                   (4) the determination of the feasibility of certain  
21 federal projects;

22                   (5) the adoption and enforcement of rules and  
23 performance of other acts relating to the safe construction,  
24 maintenance, and removal of dams;

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

27                   (7) the administration of the state's program relating

1 to inactive hazardous substance, pollutant, and contaminant  
2 disposal facilities;

3 (8) the administration of a portion of the state's  
4 injection well program;

5 (9) the administration of the state's programs  
6 involving underground water and water wells and drilled and mined  
7 shafts;

8 (10) the state's responsibilities relating to regional  
9 waste disposal;

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

13 (12) the administration of the national flood  
14 insurance program;

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

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

19 SECTION 13. Sections 401.153 and 401.306, Health and Safety  
20 Code, and Chapter 402, Health and Safety Code, are repealed.

21 SECTION 14. This Act takes effect September 1, 2003.