

By: Bonnen

H.B. No. 118

A BILL TO BE ENTITLED

1 AN ACT

2 relating to responsibilities of certain state agencies concerning
3 radioactive substances; imposing fees and surcharges.

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

5 SECTION 1. Section 401.003, Health and Safety Code, is
6 amended by amending Subdivisions (2), (4), (5), (6), and adding
7 Subdivision (12-a) to read as follows:

8 (2) "Board" means the executive commissioner of the
9 Health and Human Services Commission [~~Texas Board of Health~~].

10 (4) "Commission" means the Texas [~~Natural Resource~~
11 ~~Conservation~~] Commission on Environmental Quality.

12 (5) "Commissioner" means the commissioner of state
13 [~~public~~] health services.

14 (6) "Department" means the [~~Texas~~] Department of State
15 Health Services or other department designated by the executive
16 commissioner of the Health and Human Services Commission.

17 (12-a) "Gross receipts" includes, with respect to an
18 entity or affiliated members, owners, shareholders, or limited or
19 general partners, all receipts from the entity's disposal
20 operations in Texas licensed under this chapter including any
21 bonus, commission, or similar payment received by the entity from a
22 customer, contractor, subcontractor, or other person doing
23 business with the entity or affiliated members, owners,
24 shareholders, or limited or general partners. This term does not

1 include receipts from the entity's operations in Texas, or
2 affiliated members, owners, shareholders, or limited or general
3 partners, for capital reimbursements, bona fide storage and
4 processing, and federal or state taxes or fees on waste received
5 uniquely required to meet the specifications of a license or
6 contract. The commission may promulgate rules in establishing the
7 criteria for determining gross receipts consistent with the
8 parameters of this definition.

9 SECTION 2. Subsections (a) and (b), Section 401.011, Health
10 and Safety Code, are amended to read as follows:

11 (a) The department is the Texas Radiation Control Agency.
12 The department has jurisdiction over activities and substances
13 regulated under this chapter except as provided by Subsection (b)
14 and Subchapters E, F, G, and K.

15 (b) The commission has jurisdiction to regulate and
16 license:

17 (1) the disposal of radioactive substances;

18 (2) the processing or storage of low-level radioactive
19 waste or naturally occurring radioactive material waste received
20 from other persons, except oil and gas NORM;

21 (3) the recovery or processing of source material in
22 accordance with Subchapter G;

23 (4) the processing of by-product material as defined
24 by Section 401.003(3)(B); and

25 (5) sites for the disposal of:

26 (A) low-level radioactive waste;

27 (B) by-product material; or

1 (C) naturally occurring radioactive material
2 waste [~~except by-product material defined by Section~~
3 ~~401.003(3)(B)]].~~

4 SECTION 3. Section 401.104, Health and Safety Code, is
5 amended by amending Subsection (b) and adding Subsection (f) to
6 read as follows:

7 (b) Except as provided by Subsection (e), the commission by
8 rule shall provide for licensing for the disposal of radioactive
9 substances [~~material except for the disposal of by-product material~~
10 ~~defined by Section 401.003(3)(B). The department by rule shall~~
11 ~~provide for licensing the disposal of by-product material defined~~
12 ~~by Section 401.003(3)(B)]].~~

13 (f) A separate commercial storage and processing license
14 may be issued for a site also licensed for disposal under this
15 chapter.

16 SECTION 4. Subsection (a), Section 401.106, Health and
17 Safety Code, is amended to read as follows:

18 (a) The board or commission by rule may exempt a source of
19 radiation or a kind of use or user from the licensing or
20 registration requirements provided by this chapter and under the
21 agency's jurisdiction if the board or commission finds that the
22 exemption of that source of radiation or kind of use or user will
23 not constitute a significant risk to the public health and safety
24 and the environment.

25 SECTION 5. Subsection (c), Section 401.108, Health and
26 Safety Code, is amended to read as follows:

27 (c) The [~~department or~~] commission shall reevaluate every

1 five years the qualifications and security provided by a license
2 holder under Subchapter F or Subchapter G. The reevaluation may
3 coincide with license renewal procedures if renewal and
4 reevaluation occur in the same year.

5 SECTION 6. Subsection (b), Section 401.109, Health and
6 Safety Code, is amended to read as follows:

7 (b) The [~~department or~~] commission shall require a holder of
8 a license that authorizes the disposal of radioactive substances
9 [~~low-level radioactive waste as provided by Subchapter F~~] to
10 provide security acceptable to the commission [~~agency~~] to assure
11 performance of the license holder's obligations under this chapter.

12 SECTION 7. Section 401.111, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

15 (a) The [~~board and~~] commission [~~each~~], in adopting rules for the
16 issuance of licenses under the commission's jurisdiction [~~their~~
17 ~~respective jurisdictions~~] for new sites for processing or disposal
18 of radioactive substances [~~low-level radioactive waste~~] from other
19 persons, shall adopt criteria for the designation of unsuitable
20 sites, including:

- 21 (1) flood hazard areas;
- 22 (2) areas with characteristics of discharge from or
23 recharge of a groundwater aquifer system; or
- 24 (3) areas in which soil conditions make spill cleanup
25 impracticable.

26 (b) The [~~board and~~] commission [~~each~~] shall consult with the
27 advisory board and with the Texas Water Development Board, the

1 State Soil and Water Conservation Board, the Bureau of Economic
2 Geology, and other appropriate state agencies in developing
3 proposed rules. The ~~[board and]~~ commission ~~[each]~~ by rule shall:

4 (1) require selection of sites in areas in which
5 natural conditions minimize potential contamination of surface
6 water and groundwater; and

7 (2) prohibit issuance of licenses for unsuitable sites
8 as defined by the rules.

9 SECTION 8. Section 401.112, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR
12 DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The
13 ~~[department or]~~ commission~~[, within its jurisdiction]~~, in making a
14 licensing decision on a specific license application to process or
15 dispose of low-level radioactive waste from other persons, shall
16 consider:

17 (1) site suitability, geological, hydrological, and
18 meteorological factors, and natural ~~[naturals]~~ hazards;

19 (2) compatibility with present uses of land near the
20 site;

21 (3) socioeconomic effects on surrounding communities
22 of operation of the licensed activity and of associated
23 transportation of low-level radioactive waste;

24 (4) the need for and alternatives to the proposed
25 activity, including an alternative siting analysis prepared by the
26 applicant;

27 (5) the applicant's qualifications, including

1 financial and technical qualifications and compliance history
2 under the method for evaluation of compliance history developed by
3 the commission under Section 5.754, Water Code, for an application
4 to the commission [~~or the requirements of Section 401.110(b) for an~~
5 ~~application to the department~~];

6 (6) background monitoring plans for the proposed site;

7 (7) suitability of facilities associated with the
8 proposed activities;

9 (8) chemical, radiological, and biological
10 characteristics of the low-level radioactive waste and waste
11 classification under Section 401.053;

12 (9) adequate insurance of the applicant to cover
13 potential injury to any property or person, including potential
14 injury from risks relating to transportation;

15 (10) training programs for the applicant's employees;

16 (11) a monitoring, record-keeping, and reporting
17 program;

18 (12) spill detection and cleanup plans for the
19 licensed site and related to associated transportation of low-level
20 radioactive waste;

21 (13) decommissioning and postclosure care plans;

22 (14) security plans;

23 (15) worker monitoring and protection plans;

24 (16) emergency plans; and

25 (17) a monitoring program for applicants that includes
26 prelicense and postlicense monitoring of background radioactive
27 and chemical characteristics of the soils, groundwater, and

1 vegetation.

2 (b) An applicant for the specific license must submit with
3 the application information necessary for the commission [~~issuing~~
4 ~~agency~~] to consider the factors under Subsection (a).

5 (c) The [~~board and~~] commission [~~each within its~~
6 ~~jurisdiction~~] by rule shall provide specific criteria for the
7 different types of licensed low-level radioactive waste activities
8 for the listed factors and may include additional factors and
9 criteria that the [~~board or~~] commission[~~, as appropriate,~~]
10 determines necessary for full consideration of a license.

11 SECTION 9. Subsections (a) and (b), Section 401.113, Health
12 and Safety Code, are amended to read as follows:

13 (a) Before a hearing under Section 401.114 begins, the
14 commission [~~agency holding the hearing~~] shall prepare or have
15 prepared a written analysis of the effect on the environment of a
16 proposed licensed activity that the commission [~~agency~~] determines
17 has a significant effect on the human environment.

18 (b) The commission [~~agency~~] shall make the analysis
19 available to the public not later than the 31st day before the date
20 of a hearing under Section 401.114.

21 SECTION 10. Section 401.114, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 401.114. NOTICE AND HEARING. (a) Before the
24 [~~department or~~] commission[~~, within its jurisdiction,~~] grants or
25 renews a license to process or dispose of low-level radioactive
26 waste from other persons, the commission [~~agency~~] shall give notice
27 and shall provide an opportunity for a public hearing in the manner

1 provided by the commission's [~~agency's~~] formal hearing procedure
2 and Chapter 2001, Government Code.

3 (b) In addition to other notice, the commission [~~agency~~]
4 shall publish notice of the hearing in the manner provided by
5 Chapter 313, Government Code, in the county in which the proposed
6 facility is to be located. The notice shall state the subject and
7 the time, place, and date of the hearing.

8 (c) The commission [~~agency~~] shall mail, by certified mail in
9 the manner provided by the commission's [~~agency's~~] rules, written
10 notice to each person who owns property adjacent to the proposed
11 site. The notice must be mailed not later than the 31st day before
12 the date of the hearing and must include the same information that
13 is in the published notice. If true, the commission [~~agency~~] or the
14 applicant must certify that the notice was mailed as required by
15 this subsection, and at the hearing the certificate is conclusive
16 evidence of the mailing.

17 SECTION 11. Section 401.116, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 401.116. LICENSE AMENDMENT. The commission shall
20 adopt rules to establish requirements for public notice of and
21 public participation in the amendment of a license issued under
22 this subchapter. [~~(a) An amendment to a license to process or~~
23 ~~dispose of low-level radioactive waste from other persons may take~~
24 ~~effect immediately.~~

25 [~~(b) The department or commission, as appropriate, shall~~
26 ~~publish notice of the license amendment once in the Texas Register~~
27 ~~and in a newspaper of general circulation in the county in which the~~

1 ~~licensed activity is located and shall give notice to any person who~~
2 ~~has notified the agency, in advance, of the desire to receive notice~~
3 ~~of proposed amendment of the license.~~

4 ~~[(c) Notice under this section must include:~~

5 ~~[(1) the identity of the license holder,~~

6 ~~[(2) identification of the license, and~~

7 ~~[(3) a short and plain statement of the license~~
8 ~~amendment's substance.~~

9 ~~[(d) The agency shall give notice and hold a hearing to~~
10 ~~consider the license amendment if a person affected files a written~~
11 ~~complaint with the agency before the 31st day after the date on~~
12 ~~which notice is published under Subsection (b). The agency shall~~
13 ~~give notice of the hearing as provided by Section 401.114].~~

14 SECTION 12. Section 401.117, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~
17 ~~commission~~ shall prohibit major construction relating to
18 activities to be permitted under a license issued by the commission
19 ~~[agency]~~ to process or dispose of low-level radioactive waste from
20 other persons until the requirements in Sections 401.113 and
21 401.114 are completed.

22 SECTION 13. Subsection (a), Section 401.202, Health and
23 Safety Code, is amended to read as follows:

24 (a) The commission ~~[or department, within its respective~~
25 ~~jurisdiction,~~] may grant, deny, renew, revoke, suspend, or withdraw
26 licenses for the disposal of low-level radioactive waste from other
27 persons and for the processing of that waste.

1 SECTION 14. Subsections (a) and (b), Section 401.241,
2 Health and Safety Code, are amended to read as follows:

3 (a) In determining the amount of security required of a
4 [~~compact waste disposal facility license~~] holder of a license to
5 dispose of radioactive substances under Section 401.109, the
6 commission shall also consider the need for financial security to
7 address and prevent unplanned events that pose a risk to public
8 health and safety and that may occur after the decommissioning and
9 closure of the radioactive substances [~~compact waste~~] disposal
10 facility [~~or a federal facility waste disposal facility licensed~~
11 ~~under Section 401.216~~].

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

20 (1) the amount of low-level radioactive waste received
21 at the site;

22 (2) the long-term risk to health, safety, and the
23 environment posed by the waste; and

24 (3) the need to address and prevent unplanned events
25 that pose a risk to public health and safety.

26 SECTION 15. Section 401.262, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL.

2 The commission [~~department~~] has sole and exclusive authority to
3 assure that processing and disposal sites are closed and that
4 by-product material is managed and disposed of in compliance with:

5 (1) the federal commission's applicable standards; and

6 (2) closure criteria the federal commission and the
7 United States Environmental Protection Agency have determined are
8 protective of human health and safety and the environment.

9 SECTION 16. Section 401.2625, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 401.2625. LICENSING AUTHORITY. The commission
12 [~~commissioner~~] has sole and exclusive authority to grant, deny,
13 renew, revoke, suspend, amend, or withdraw licenses for source
14 material recovery and processing or for storage, processing, or
15 disposal of by-product material.

16 SECTION 17. Subsections (a), (c), (d), (e), and (f),
17 Section 401.263, Health and Safety Code, are amended to read as
18 follows:

19 (a) If the commission [~~department~~] is considering the
20 issuance, renewal, or amendment of a license to process materials
21 that produce by-product materials or a license to dispose of
22 by-product material and the commission [~~department~~] determines
23 that the licensed activity will have a significant impact on the
24 human environment, the commission [~~department~~] shall prepare or
25 have prepared a written environmental analysis.

26 (c) The commission [~~department~~] shall give notice of the
27 analysis as provided by commission [~~board~~] rule and shall make the

1 analysis available to the public for written comment not later than
2 the 31st day before the date of the hearing on the license.

3 (d) After notice is given, the commission [~~department~~]
4 shall provide an opportunity for written comments by persons
5 affected.

6 (e) The analysis shall be included as part of the record of
7 the commission's [~~department's~~] proceedings.

8 (f) The commission [~~board~~] by rule shall prohibit major
9 construction with respect to an activity that is to be licensed
10 until the requirements of Subsections (a), (b), (c), and (e) are
11 completed.

12 SECTION 18. Subsections (a), (c), and (d), Section 401.264,
13 Health and Safety Code, are amended to read as follows:

14 (a) The commission [~~department~~] on its own motion may or on
15 the written request of a person affected shall provide an
16 opportunity for a public hearing on an application over which the
17 commission [~~department~~] has jurisdiction to determine whether to
18 issue, renew, or amend a license to process materials that produce
19 by-product materials or a license to dispose of by-product
20 materials in the manner provided by Chapter 2001, Government Code,
21 and permit appearances with or without counsel and the examination
22 and cross-examination of witnesses under oath.

23 (c) The commission [~~department~~] shall make a record of the
24 proceedings and provide a transcript of the hearing on request of,
25 and payment for, the transcript or provision of a sufficient
26 deposit to assure payment by any person requesting the transcript.

27 (d) The commission [~~department~~] shall provide an

1 opportunity to obtain a written determination of action to be
2 taken. The determination must be based on evidence presented to the
3 commission [~~department~~] and include findings. The written
4 determination is available to the public.

5 SECTION 19. Section 401.265, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL
8 LICENSES. The commission [~~department~~] shall prescribe conditions
9 in a radioactive substances [~~material~~] license issued, renewed, or
10 amended for an activity that results in production of by-product
11 material to minimize or, if possible, eliminate the need for
12 long-term maintenance and monitoring before the termination of the
13 license, including conditions that:

14 (1) the license holder will comply with the applicable
15 decontamination, decommissioning, reclamation, and disposal
16 standards that are prescribed by the commission [~~board~~] and that
17 are compatible with the federal commission's standards for sites at
18 which those ores were processed and at which the by-product
19 material is deposited; and

20 (2) the ownership of a disposal site, other than a
21 disposal well covered by a permit issued under Chapter 27, Water
22 Code, licensed on-site waste disposal associated with a licensed in
23 situ leach uranium recovery facility, and the by-product material
24 resulting from the licensed activity are transferred, subject to
25 Sections 401.266-401.269, to:

26 (A) the state; or

27 (B) the federal government if the state declines

1 to acquire the site, the by-product material, or both the site and
2 the by-product material.

3 SECTION 20. Subsection (a), Section 401.266, Health and
4 Safety Code, is amended to read as follows:

5 (a) The commission [~~board~~] by rule or [~~order or the~~
6 ~~department by~~] order may require that before a license covering
7 land used for the disposal of by-product material is terminated,
8 the land, including any affected interests in the land, must be
9 transferred to the federal government or to the state unless:

10 (1) the federal commission determines before the
11 license terminates that the transfer of title to the land and the
12 by-product material is unnecessary to protect the public health,
13 safety, or welfare or to minimize danger to life or property; or

14 (2) the land is held in trust by the federal government
15 for an Indian tribe, is owned by an Indian tribe subject to a
16 restriction against alienation imposed by the federal government,
17 is owned by the federal government, or is owned by the state.

18 SECTION 21. Section 401.267, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT
21 MATERIALS AND SITES. (a) The commission [~~department~~] may acquire
22 by-product material and fee simple title in land, affected mineral
23 rights, and buildings at which that by-product material is disposed
24 of and abandoned so that the by-product material and property can be
25 managed in a manner consistent with protecting public health,
26 safety, and the environment.

27 (b) The commission [~~department~~] may sell land acquired

1 under this section at the land's fair market value after the
2 commission [~~department~~] has taken corrective action to restore the
3 land to a condition that does not compromise the public health or
4 safety or the environment. The General Land Office shall negotiate
5 and close a transaction under this subsection on behalf of the
6 commission [~~department~~] using procedures under Section 31.158(c),
7 Natural Resources Code. Proceeds from the transaction shall be
8 deposited in the Texas capital trust fund.

9 SECTION 22. Section 401.269, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY
12 MEASURES. (a) The commission [~~department~~] may undertake
13 monitoring, maintenance, and emergency measures in connection with
14 by-product material and property for which it has assumed custody
15 under Section 401.267 that are necessary to protect the public
16 health and safety and the environment.

17 (b) The commission [~~department~~] shall maintain the
18 by-product material and property transferred to it in a manner that
19 will protect the public health and safety and the environment.

20 SECTION 23. Subsections (a), (b), (e), and (f), Section
21 401.270, Health and Safety Code, are amended to read as follows:

22 (a) If the commission [~~department~~] finds that by-product
23 material or the operation by which that by-product material is
24 derived threatens the public health and safety or the environment,
25 the commission [~~department~~] by order may require any action,
26 including a corrective measure, that is necessary to correct or
27 remove the threat.

1 (b) The commission [~~department~~] may issue an emergency
2 order to a person responsible for an activity, including a past
3 activity, concerning the recovery or processing of source material
4 or the disposal of by-product material if it appears that there is
5 an actual or threatened release of source material or by-product
6 material that presents an imminent and substantial danger to the
7 public health and safety or the environment, regardless of whether
8 the activity was lawful at the time. The emergency order may be
9 issued without notice or hearing.

10 (e) The commission [~~department~~] shall use the security
11 provided by the license holder to pay the costs of actions that are
12 taken or that are to be taken under this section. The commission
13 [~~department~~] shall send to the comptroller a copy of its order
14 together with necessary written requests authorizing the
15 comptroller to:

- 16 (1) enforce security supplied by the licensee;
- 17 (2) convert an amount of security into cash, as
18 necessary; and
- 19 (3) disburse from the security in the perpetual care
20 account the amount necessary to pay the costs.

21 (f) If an order issued by the commission [~~department~~] under
22 this section is adopted without notice or hearing, the order shall
23 set a time, at least 10 but not more than 30 days following the date
24 of issuance of the emergency order, and a place for a hearing to be
25 held in accordance with the rules of the commission [~~board~~]. As a
26 result of this hearing, the commission [~~department~~] shall decide
27 whether to affirm, modify, or set aside the emergency order. All

1 provisions of the emergency order shall remain in force and effect
2 during the pendency of the hearing, unless otherwise altered by the
3 commission [~~department~~].

4 SECTION 24. Subchapter G, Chapter 401, Health and Safety
5 Code, is amended by adding Sections 401.271 and 401.272 to read as
6 follows:

7 Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A
8 holder of a license issued by the commission under this chapter that
9 authorizes the disposal of a radioactive substance from other
10 persons shall remit each quarter an amount equal to 10 percent of
11 the license holder's gross receipts received from disposal
12 operations under a license issued under this chapter that occur
13 after the effective date of the Act enacting this section as
14 follows:

15 (1) eight percent shall be remitted to the comptroller
16 for deposit into the general revenue fund; and

17 (2) two percent shall be remitted to the host county in
18 accordance with Sections 401.244(b) and (d).

19 (b) Subsection (a) does not apply to compact waste or
20 federal facility waste as defined by Section 401.2005.

21 Sec. 401.272. AUDIT AUTHORITY. The commission may audit a
22 license holder's financial records and waste manifest information
23 to ensure that the fees imposed under this chapter are accurately
24 paid. The license holder shall comply with the commission's
25 audit-related requests for information.

26 SECTION 25. Section 401.301, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 401.301. LICENSE AND REGISTRATION FEES [~~COLLECTED BY~~
2 ~~DEPARTMENT~~]. (a) The commission and department may collect a fee
3 for each license and registration the agency [~~it~~] issues.

4 (b) The commission and the board each by rule shall set the
5 fee in an amount that may not exceed the actual expenses annually
6 incurred to:

7 (1) process applications for licenses or
8 registrations;

9 (2) amend or renew licenses or registrations;

10 (3) make inspections of license holders and
11 registrants; and

12 (4) enforce this chapter and rules, orders, licenses,
13 and registrations under this chapter.

14 (c) The commission and department may collect a fee, in
15 addition to the annual license and registration fee, of not less
16 than 20 percent of the amount of the annual license and registration
17 fee nor more than \$10,000 per annum from each licensee or registrant
18 who fails to pay the fees authorized by this section.

19 (d) The commission and department may require that each
20 person who holds a specific license issued by the agency
21 [~~department~~] annually pay to the agency [~~department~~] an additional
22 five percent of the appropriate annual fee set under Subsection
23 (b). Fees collected under this subsection shall be deposited to the
24 credit of the perpetual care account. The fees are not refundable.

25 (e) The commission and department shall suspend assessment
26 of a fee imposed under Subsection (d) if the amount of fees
27 collected under that subsection reaches \$500,000. If the balance

1 of fees collected subsequently is reduced to \$350,000 or less, the
2 commission and department shall reinstitute assessment of the fee
3 until the balance reaches \$500,000.

4 (f) The commission may assess and collect additional fees
5 from the applicant to recover the costs the commission incurs for
6 administrative review, technical review, and hearings on the
7 application.

8 SECTION 26. Subsection (a), Section 401.302, Health and
9 Safety Code, is amended to read as follows:

10 (a) The department, in coordination with the commission,
11 may set and collect an annual fee from the operator of each nuclear
12 reactor or other fixed nuclear facility in the state that uses
13 special nuclear material.

14 SECTION 27. Subsections (c), (e), (f), and (g), Section
15 401.305, Health and Safety Code, are amended to read as follows:

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

23 (e) The department or commission may use money in the
24 perpetual care account to pay for measures:

25 (1) to prevent or mitigate the adverse effects of
26 abandonment of radioactive substances [~~materials~~], default on a
27 lawful obligation, insolvency, or other inability by the holder of

1 a license issued by the department or commission to meet the
2 requirements of this chapter or of department or commission rules;
3 and

4 (2) to assure the protection of the public health and
5 safety and the environment from the adverse effects of ionizing
6 radiation.

7 (f) The department or commission may provide, by the terms
8 of a contract or lease entered into between the department or
9 commission and any person or by the terms of a license issued by the
10 department or commission to any person, for the decontamination,
11 closure, decommissioning, reclamation, surveillance, or other care
12 of a site or facility subject to department or commission
13 jurisdiction under this chapter as needed to carry out the purpose
14 of this chapter.

15 (g) The existence of the perpetual care account does not
16 make the department or commission liable for the costs of
17 decontamination, transfer, transportation, reclamation,
18 surveillance, or disposal of radioactive substances [~~material~~]
19 arising from a license holder's abandonment of radioactive
20 substances [~~material~~], default on a lawful obligation, insolvency,
21 or inability to meet the requirements of this chapter or of
22 department or commission rules.

23 SECTION 28. Section 401.343, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 401.343. RECOVERY OF SECURITY. (a) The department or
26 commission shall seek reimbursement, either by an order of the
27 department or commission or a suit filed by the attorney general at

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

10 (b) On request by the department or commission, the attorney
11 general shall file suit to recover security under this section.

12 SECTION 29. The heading to Subchapter K, Chapter 401,
13 Health and Safety Code, is amended to read as follows:

14 SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS ~~[NATURAL RESOURCE~~
15 ~~CONSERVATION]~~ COMMISSION ON ENVIRONMENTAL QUALITY AND THE
16 RAILROAD COMMISSION OF TEXAS

17 SECTION 30. Subsections (a) and (b), Section 401.412,
18 Health and Safety Code, are amended to read as follows:

19 (a) Upon the transfer of the rights, powers, duties,
20 obligations, functions, and activities related to the regulation
21 and licensing of the disposal of radioactive substances from the
22 department to the commission, and ~~[N]~~notwithstanding any other
23 provision of this chapter and subject to Sections 401.102 and
24 401.415, the commission has sole and exclusive authority to
25 directly regulate and to grant, deny, renew, revoke, suspend,
26 amend, or withdraw licenses for the disposal of radioactive
27 substances. ~~[In this subsection, "radioactive substance" does not~~

1 ~~include by-product material as defined by Section 401.003(3)(B).]~~

2 (b) Upon the transfer of the rights, powers, duties,
3 obligations, functions, and activities related to the regulation
4 and licensing of the disposal of radioactive substances from the
5 department to the commission, and [N]notwithstanding any other
6 provision of this chapter, the commission [~~commissioner~~] has the
7 sole and exclusive authority to grant, deny, renew, revoke,
8 suspend, amend, or withdraw licenses for the recovery and
9 processing of source material or disposal of by-product material
10 under Subchapter G.

11 SECTION 31. Section 401.413, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A
14 person required by another section of this chapter to obtain a
15 license for the disposal of a radioactive substance is required to
16 obtain the license from the commission and not from the department.
17 [~~This section does not apply to a person required to obtain a~~
18 ~~license for recovery or processing of source material or for~~
19 ~~recovery, processing, or disposal of by-product material as defined~~
20 ~~by Section 401.003(3)(B).]~~

21 SECTION 32. Section 401.414, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 401.414. MEMORANDA [~~MEMORANDUM~~] OF UNDERSTANDING. The
24 Texas [~~Natural Resource Conservation~~] Commission on Environmental
25 Quality, the Health and Human Services Commission, and the Railroad
26 Commission of Texas [~~and the board of health~~] by rule shall adopt
27 memoranda [~~a memorandum~~] of understanding defining their

1 respective duties under this chapter.

2 SECTION 33. Section 401.415, Health and Safety Code, is
3 amended by amending Subsections (a), (d), and (e) and adding
4 Subsection (f) to read as follows:

5 (a) Notwithstanding any other provision of this chapter,
6 the Railroad Commission of Texas:

7 (1) has sole authority to regulate and issue licenses,
8 permits, and orders, and establish fees to pay for costs to regulate
9 the processing, storage, and disposal of oil and gas NORM waste and
10 the decontamination and maintenance of oil-field equipment; and

11 (2) may, in order to protect public health and safety
12 and the environment, require the owner or operator of oil and gas
13 equipment used in exploration, production, or disposal to:

14 (A) determine whether the equipment contains or
15 is contaminated with oil and gas NORM waste; and

16 (B) identify any equipment determined to contain
17 or be contaminated with oil and gas NORM.

18 (d) The Railroad Commission of Texas shall consult with the
19 department and the commission [~~Texas Natural Resource Conservation~~
20 ~~Commission~~] as appropriate regarding administration of this
21 section.

22 (e) To ensure that the State of Texas retains its Agreement
23 Status with the U.S. Nuclear Regulatory Commission, and to ensure
24 that radioactive materials are managed consistently to protect the
25 public health and safety and the environment, the Railroad
26 Commission of Texas shall issue rules on the management of oil and
27 gas NORM waste, including rules governing processing, storage, and

1 disposal of the waste, decontamination and maintenance of oil-field
2 equipment, and fees established pursuant to Subsection (a). In
3 developing those rules, the railroad commission [~~and in so doing~~]
4 shall consult with the commission [~~Texas Natural Resource~~
5 ~~Conservation Commission~~] and the department [~~Department of Health~~]
6 regarding protection of the public health and the environment. The
7 rules of the railroad commission shall provide protection for
8 public health, safety, and the environment equivalent to the
9 protection provided by rules of the commission applicable to
10 processing, storage, and disposal of other NORM wastes having
11 similar properties, quantities, and distribution[~~, although the~~
12 ~~approved methods and sites for disposing of oil and gas NORM wastes~~
13 ~~may be different from those approved for other NORM wastes~~].

14 (f) In adopting a fee structure, the Railroad Commission of
15 Texas may consider any factors necessary to provide for the
16 equitable allocation among NORM operators of the costs of
17 administering the railroad commission's oil and gas NORM program
18 under this section. The total amount of fees estimated to be
19 collected under rules adopted by the railroad commission under this
20 section may not exceed the estimated costs of administering the
21 railroad commission's oil and gas NORM program under this section.

22 SECTION 34. Section 361.015, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The
25 commission is the state agency under Chapter 401 that licenses and
26 regulates radioactive waste storage, processing, and disposal
27 activities not preemptively regulated by the federal government.

1 **(b) Except as provided by Subsection (a), the Health and**
2 **Human Services Commission, acting through the Department of State**
3 **Health Services or other department as designated by the executive**
4 **commissioner of the Health and Human Services Commission, [The**
5 **Texas Department of Health]** is the state agency under Chapter 401
6 that regulates radioactive waste activities [~~, excluding disposal,~~]
7 not preemptively regulated by the federal government.

8 **(c) The Railroad Commission of Texas is the state agency**
9 **that licenses and regulates the possession, storage, processing,**
10 **handling, and disposal of oil and gas NORM waste and the**
11 **decontamination and maintenance of oil-field equipment.**

12 SECTION 35. Subchapter B, Chapter 27, Water Code, is
13 amended by adding Section 27.023 to read as follows:

14 **Sec. 27.023. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF**
15 **RADIOACTIVE SUBSTANCES. (a) As a component of an injection well**
16 **permit, the commission may issue an authorization for in situ**
17 **mining of radioactive substances in a specified production area.**
18 **The authorization may not contain a provision that requires any**
19 **additional approval of the commission or any additional hearing for**
20 **the permit holder to conduct minor in situ mining in the production**
21 **area. The commission by rule shall define the difference between**
22 **major and minor in situ mining.**

23 **(b) On or after the effective date of the Act enacting this**
24 **section, a rule or provision of a permit or order of the commission**
25 **that requires additional approval of the commission or an**
26 **additional hearing for the permit holder to conduct minor in situ**
27 **mining in the production area specified in an injection well permit**

1 is not effective. Notwithstanding any provision of this code or of
2 a commission rule or order, an application for minor in situ
3 authorization is not subject to a contested case hearing,
4 regardless of when the application is submitted.

5 (c) This section does not affect the authority of the
6 commission to:

7 (1) revoke, suspend, or amend a permit issued under
8 this chapter;

9 (2) investigate a permit holder or an action taken
10 under or in violation of a permit issued under this chapter; or

11 (3) enforce a provision of a permit issued under this
12 chapter.

13 (d) The change in law made by this section does not affect
14 any matter that is a subject of litigation on or before November 1,
15 2005. An administrative law judge presiding over a licensure
16 proceeding under this section shall expedite the procedures
17 necessary to complete the hearing in a timely manner.

18 SECTION 36. (a) An application for a new license to dispose
19 of by-product material that is filed with the Department of State
20 Health Services on or before January 1, 2005, shall be processed as
21 follows:

22 (1) a license application subject to this subsection
23 shall be governed only by the rules and regulations of the
24 department effective at the time such application was filed;

25 (2) the department shall complete any technical review
26 of a license application subject to this subsection and may issue a
27 draft license no later than January 1, 2006;

1 (3) the department shall render a final decision on a
2 license application subject to this subsection no later than
3 January 1, 2007; and

4 (4) a contested case hearing held on a license
5 application subject to this subsection that was filed with the
6 department on or before January 1, 2005, shall be timely conducted
7 to meet the requirement of (a)(3). Discovery in such a hearing
8 shall be limited to not more than 60 days in order to meet this
9 limitation. Notice of hearing shall be provided to the applicant,
10 the office of public interest counsel, the commissioner, and the
11 person who timely requested a contested case hearing by mail at
12 least 10 days in advance of the hearing.

13 (b) On the thirtieth day following the department's final
14 decision regarding a license application subject to subsection (a),
15 the following rights, powers, duties, obligations, functions,
16 activities, property, programs, and appropriations are transferred
17 to the Texas Commission on Environmental Quality:

18 (1) all rights, powers, duties, obligations,
19 functions, and activities:

20 (A) that Chapter 401, Health and Safety Code,
21 assigns to the Texas Department of Health, the Texas Board of
22 Health, or their successor agencies or to the governing body,
23 officers, or employees of that department, that board, or their
24 successor agencies, including the Health and Human Services
25 Commission and the Department of State Health Services; and

26 (B) that are related to licensing and regulation
27 of:

1 (i) radioactive substances recovery,
2 storage, processing, and disposal; or

3 (ii) long-term care of decommissioned sites
4 for disposal of by-product material;

5 (2) all equipment, information, documents,
6 facilities, and other property of the Health and Human Services
7 Commission or the Department of State Health Services pertaining to
8 licensing and regulation of:

9 (A) radioactive substances recovery, storage,
10 processing, and disposal under the jurisdiction of the Texas
11 Commission on Environmental Quality as provided by Subsection (b),
12 Section 401.011, Health and Safety Code, as amended by this Act; or

13 (B) long-term care of decommissioned sites for
14 disposal of by-product material;

15 (3) all appropriations for the state fiscal biennium
16 that begins September 1, 2005, made to the Health and Human
17 Services Commission or the Department of State Health Services for
18 activities related to licensing and regulation of:

19 (A) radioactive substances recovery, storage,
20 processing, and disposal under the jurisdiction of the Texas
21 Commission on Environmental Quality as provided by Subsection (b),
22 Section 401.011, Health and Safety Code, as amended by this Act; or

23 (B) long-term care of decommissioned sites for
24 disposal of by-product material; and

25 (4) the unexpended and unobligated portions of the
26 appropriations for the state fiscal biennium beginning
27 September 1, 2003, made to the Health and Human Services Commission

1 or the Department of State Health Services for activities described
2 by Subdivision (3) of this subsection.

3 (c) Appropriations transferred under Subdivision (4),
4 Subsection (b) of this section, are transferred for the remainder
5 of that state fiscal biennium.

6 (d) The Texas Commission on Environmental Quality, as of the
7 date of the transfer prescribed by Subsection (b) of this section,
8 has full responsibility for the administration and enforcement of
9 laws related to licensing or regulation of radioactive substances
10 recovery, storage, processing, and disposal under the jurisdiction
11 of the commission as provided by Subsection (b), Section 401.011,
12 Health and Safety Code, as amended by this Act, and licensing or
13 regulation of long-term care of decommissioned sites for the
14 disposal of by-product material. The Texas Commission on
15 Environmental Quality shall carry out all related duties,
16 responsibilities, functions, and activities as provided by law,
17 including those assigned by any other Acts of the 79th Legislature,
18 Regular Session or 1st Called Session, 2005.

19 (e) The transfer of rights, powers, duties, obligations,
20 functions, activities, property, and programs of the Health and
21 Human Services Commission or the Department of State Health
22 Services to the Texas Commission on Environmental Quality made by
23 this Act does not affect or impair any act done or obligation,
24 right, license, permit, requirement, or penalty accrued or existing
25 under the former law; that law remains in effect for the purposes of
26 any action concerning such an act done or obligation, right,
27 license, permit, requirement, or penalty. The Texas Commission on

1 Environmental Quality shall continue a proceeding of the Health and
2 Human Services Commission or the Department of State Health
3 Services that is related to a responsibility, duty, activity,
4 function, or program transferred by this Act, including processing
5 an application for a license or other authorization and including
6 enforcing the requirements of Chapter 401, Health and Safety Code,
7 or a rule adopted under that chapter. A rule of the Health and Human
8 Services Commission or the Department of State Health Services
9 related to a responsibility, duty, activity, function, or program
10 transferred by this Act is enforceable as a rule of the Texas
11 Commission on Environmental Quality until the Texas Commission on
12 Environmental Quality adopts other rules.

13 (f) Control of and title to all property and material
14 acquired by this state or an agency of this state under Section
15 401.267, Health and Safety Code, before the effective date of this
16 Act shall be transferred to the Texas Commission on Environmental
17 Quality on this state's behalf as soon as practicable. This section
18 does not apply to property or material sold by the state under
19 Subsection (b) of that section before the effective date of this
20 Act.

21 (g) The Texas Commission on Environmental Quality shall
22 provide an opportunity for employees of the Health and Human
23 Services Commission or the Department of State Health Services who
24 have performed duties related to a right, power, duty, obligation,
25 responsibility, function, activity, or program transferred by this
26 Act to request a transfer to commission employment. In making
27 employment decisions under this subsection, the Texas Commission on

1 Environmental Quality shall:

2 (1) ensure that state and federal requirements are met
3 by commission employees; and

4 (2) consider the value of maintaining continuity in
5 the personnel staffing relevant programs.

6 (h) The Texas Commission on Environmental Quality, the
7 Health and Human Services Commission, and the Department of State
8 Health Services by interagency agreement or contract shall
9 cooperate in preventing any delay that may be caused by or may occur
10 in the transfer of property or personnel or a right, power, duty,
11 obligation, responsibility, function, activity, or program made by
12 this Act.

13 (i) The transfers made by this Act do not affect any matter
14 that is the subject of litigation pending on the effective date of
15 this Act.

16 (j) The Texas Commission on Environmental Quality shall
17 continue any applications review or processing and any hearings
18 that concern a matter subject to transfer under Subsection (b) of
19 this section that, on the date of the transfer, is being conducted
20 by the Health and Human Services Commission or the Department of
21 State Health Services or their successor agencies. The agencies
22 shall cooperate and consult with each other to ensure that any delay
23 necessitated by the transfer is minimized to the greatest extent
24 possible. The Texas Commission on Environmental Quality shall
25 utilize progress made on any technical review or environmental
26 analysis conducted by the department prior to the effective date of
27 this Act.

1 (k) An application for the renewal or amendment of a license
2 to recover or process source material and to dispose of the
3 associated by-product material that was received prior to January
4 1, 2005, and is pending with the Department of State Health Services
5 on August 31, 2005, is considered, based on federal requirements,
6 approved by the Texas Commission on Environmental Quality on
7 January 1, 2007, unless the Texas Commission on Environmental
8 Quality before that date determines that the application should not
9 be approved because of a health or safety emergency or because the
10 applicant substantially fails to meet application requirements.

11 (1) By January 1, 2007, the Department of State Health
12 Services shall:

13 (1) approve any pending remediation plan that is
14 subject to the transfer required under this section, according to
15 federal requirements;

16 (2) inspect the related remediation sites to ensure
17 that remedial actions have been completed according to the approved
18 plan; and

19 (3) report to the federal Nuclear Regulatory
20 Commission the department's approval of the plan and the results of
21 the inspection under Subdivisions (1) and (2) of this subsection.

22 (m) A remediation plan that is subject to the transfer
23 required under this section the approval of which is pending with
24 the Department of State Health Services on January 1, 2007 is
25 considered, based on federal requirements, approved by the
26 department on February 1, 2007, unless the department or the Texas
27 Commission on Environmental Quality before that date determines

1 that the plan should not be approved because of a health or safety
2 emergency or because the plan substantially fails to meet
3 requirements for approval.

4 (n) Notwithstanding the changes to Chapter 401, Health and
5 Safety Code, made by this Act, the Department of State Health
6 Services shall retain jurisdiction over, and render a final
7 decision on, an application for an amended license to store or
8 process radioactive substances that was filed with the department
9 on or before January 1, 2005, and that has been referred to the
10 State Office of Administrative Hearings by the department before
11 the effective date of this Act. A license application subject to
12 this subsection is governed only by the laws of the state and the
13 rules and regulations of the department effective at the time the
14 application was filed. Once a final decision is rendered by the
15 department, jurisdiction over any license issued shall be
16 transferred to the Texas Commission on Environmental Quality.

17 (o) Prior to the transfer of the rights, powers, duties,
18 obligations, functions, and activities related to the regulation
19 and licensing of the disposal of radioactive substances from the
20 department to the commission under subsection (b), the department
21 shall provide the commission with the opportunity to comment on the
22 development and drafting of license conditions related to the
23 technical requirements for the disposal of radioactive substances.
24 Upon the transfer of the rights, powers, duties, obligations,
25 functions, and activities related to the regulation and licensing
26 of the disposal of radioactive substances from the department to
27 the commission under subsection (b), the commission may initiate an

1 amendment or a modification to a license issued by the department.

2 SECTION 37. (a) In the event that the department does not
3 render a final determination on a license application subject to
4 Section 36(a) of this Act in a timely manner in accordance with
5 Section 36(b) of this Act, the department shall remain responsible
6 for rendering a final determination on the license application.

7 SECTION 38. (a) In this section, "license" means a license
8 that authorizes the license holder to receive, process, store, and
9 transfer by-product material, as defined by Paragraph (B),
10 Subdivision (3), Section 401.003, Health and Safety Code.

11 (b) On the effective date of this Act, a condition of a
12 license that would subject the license holder to a civil or
13 administrative penalty for the license holder's failure to transfer
14 by-product material to certain disposal sites by a certain date is
15 void.

16 SECTION 39. (a) This Act does not impair, delay, or affect
17 the priority established by law for processing and review of the
18 application for a license to dispose of low-level radioactive waste
19 that was filed with the Texas Commission on Environmental Quality
20 before January 1, 2005.

21 (b) The Texas Commission on Environmental Quality shall
22 give priority to the processing and review of a license application
23 described by Subsection (a) of this section over all other
24 applications that pertain to radioactive substances or radioactive
25 waste pending before the commission except for those applications
26 the executive director of the Texas Commission on Environmental
27 Quality determines are necessarily of a higher priority to avert or

1 address an emergency concerning the public health or safety.

2 (c) Subject to the priority given under Subsection (b) of
3 this section to the application, the Texas Commission on
4 Environmental Quality shall give priority to the review and
5 processing of:

6 (1) an application for termination of a license to
7 recover or process source material and dispose of associated
8 by-product material generated in this state; and

9 (2) a new application for a permit to recover or
10 process source material and dispose of associated by-product
11 material generated in this state.

12 SECTION 40. Notwithstanding other law or any rule on the
13 subject of timeliness of an applicant providing information
14 pertaining to an application for a license from the Texas
15 Commission on Environmental Quality, the applicant for a license
16 shall assist the commission in meeting any deadlines imposed by
17 Chapter 401, Health and Safety Code, by submitting to the
18 commission any information the commission requires regarding the
19 application in a prompt and timely manner.

20 SECTION 41. (a) Pursuant to Section 36(b) of this Act:

21 (1) all money appropriated to the Department of State
22 Health Services for the regulation of the commercial storage and
23 processing and the disposal of radioactive waste, except money
24 related to the regulation of oil and gas naturally occurring
25 radioactive material waste, is transferred to the Texas Commission
26 on Environmental Quality, including \$447,608 out of the General
27 Revenue Fund in each fiscal year of the state fiscal biennium

1 beginning September 1, 2005; and

2 (2) eight full-time equivalent employees of the
3 Department of State Health Services working in the regulation of
4 the commercial storage and processing and the disposal of
5 radioactive waste, except those employees whose work is related to
6 the regulation of oil and gas naturally occurring radioactive
7 material waste, are transferred to the Texas Commission on
8 Environmental Quality.

9 (b) Fee revenues deposited to the credit of the General
10 Revenue Fund (No. 0001), Revenue Code 3589, are appropriated to the
11 Texas Commission on Environmental Quality in the amounts not to
12 exceed \$1,181,156 for the state fiscal year beginning September 1,
13 2005, and not to exceed \$1,064,656 for the state fiscal year
14 beginning September 1, 2006.

15 (c) The Texas Commission on Environmental Quality shall use
16 the appropriated money to regulate radioactive waste as provided by
17 Chapter 401, Health and Safety Code.

18 (d) The number of full-time equivalent employees authorized
19 for the Texas Commission on Environmental Quality is increased by
20 an additional eight for each fiscal year of the state fiscal
21 biennium beginning September 1, 2005.

22 (e) The governor with the advice of the Legislative Budget
23 Board may resolve any disputes concerning the transfer of
24 appropriations and employees from the Department of State Health
25 Services to the Texas Commission on Environmental Quality under
26 this Act.

27 SECTION 42. (a) The following sections of this Act shall

1 become effective on the effective date of this Act:

2 (1) Section 1

3 (2) Section 24

4 (3) Section 26

5 (4) Section 35

6 (5) Section 36

7 (6) Section 37

8 (7) Section 38

9 (8) Section 39

10 (9) Section 40

11 (b) All other sections of this Act become effective pursuant
12 to Section 36(b) of this Act.

13 SECTION 43. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect November 1, 2005.