

By: Duncan

S.B. No. 39

A BILL TO BE ENTITLED

AN ACT

relating to responsibilities of certain state agencies concerning radioactive substances; imposing fees and surcharges; providing administrative and civil penalties.

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

SECTION 1. Section 401.003, Health and Safety Code, is amended by amending Subdivisions (2), (4), (5), (6), and (15) and by adding Subdivision (12-a) to read as follows:

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

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

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

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

(12-a) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners,

1 shareholders, or limited or general partners. This term does not  
2 include receipts from the entity's operations in Texas, or  
3 affiliated members, owners, shareholders, or limited or general  
4 partners, for capital reimbursements, bona fide storage and  
5 processing, and federal or state taxes or fees on waste received  
6 uniquely required to meet the specifications of a license or  
7 contract. The commission may promulgate rules in establishing the  
8 criteria for determining gross receipts consistent with the  
9 parameters of this definition.

10 (15) "Person affected" means a person who demonstrates  
11 that the person has suffered or will suffer actual injury or  
12 economic damage and, if the person is not a local government:

13 (A) is a resident of a county, or a county  
14 adjacent to that county, in which a nuclear or radioactive  
15 substance ~~[material]~~ is or will be located; or

16 (B) is doing business or has a legal interest in  
17 land in the county or adjacent county.

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

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

24 (b) The commission has jurisdiction to regulate and  
25 license:

26 (1) the disposal of radioactive substances;

27 (2) the processing or storage of low-level radioactive

1 waste or naturally occurring radioactive material waste received  
2 from other persons, except oil and gas NORM;

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

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

7 (5) sites for the disposal of:

8 (A) low-level radioactive waste;

9 (B) by-product material; or

10 (C) naturally occurring radioactive material  
11 waste [except by-product material defined by Section  
12 401.003(3)(B)].

13 SECTION 3. Section 401.054, Health and Safety Code, is  
14 amended to read as follows:

15 Sec. 401.054. NOTICE AND HEARING. (a) The department or  
16 commission shall provide notice and an opportunity for a hearing on  
17 a matter under its jurisdiction as provided by its formal hearing  
18 procedures and Chapter 2001, Government Code, unless otherwise  
19 required by this chapter, on written request of a person affected by  
20 any of the following procedures:

21 (1) the denial, suspension, or revocation by the  
22 department or commission of a license or registration;

23 (2) the determination by the department or commission  
24 of compliance with or the grant of exemptions from a department or  
25 commission rule or order; or

26 (3) the grant or amendment by the department or  
27 commission of a specific license.

1           (b) The commission may hold a contested case hearing on a  
2 license application under this chapter on the commission's  
3 determination that a timely written request for a contested case  
4 hearing was filed by a person affected. The determination of who is  
5 a person affected under this chapter is governed exclusively by  
6 this chapter [~~This section does not apply to license or~~  
7 ~~registration activities for which other notice and hearing~~  
8 ~~procedures are required by this chapter]~~.

9           (c) The commission may hold a contested case hearing on an  
10 application for the renewal of or an amendment of a license issued  
11 under this chapter only if a change is being requested that would  
12 constitute a major amendment and a person affected requests the  
13 hearing.

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

17           (b) Except as provided by Subsection (e), the commission by  
18 rule shall provide for licensing for the disposal of radioactive  
19 substances [~~material except for the disposal of by-product material~~  
20 ~~defined by Section 401.003(3)(B). The department by rule shall~~  
21 ~~provide for licensing the disposal of by-product material defined~~  
22 ~~by Section 401.003(3)(B)]~~.

23           (f) A separate commercial storage and processing license  
24 may be issued for a site also licensed for disposal under this  
25 chapter.

26           SECTION 5. Subsection (a), Section 401.106, Health and  
27 Safety Code, is amended to read as follows:

1 (a) The board or commission by rule may exempt a source of  
2 radiation or a kind of use or user from the licensing or  
3 registration requirements provided by this chapter and under the  
4 agency's jurisdiction if the board or commission finds that the  
5 exemption of that source of radiation or kind of use or user will  
6 not constitute a significant risk to the public health and safety  
7 and the environment.

8 SECTION 6. Subsection (c), Section 401.108, Health and  
9 Safety Code, is amended to read as follows:

10 (c) The [~~department or~~] commission shall reevaluate every  
11 five years the qualifications and security provided by a license  
12 holder under Subchapter F or Subchapter G. The reevaluation may  
13 coincide with license renewal procedures if renewal and  
14 reevaluation occur in the same year.

15 SECTION 7. Subsection (b), Section 401.109, Health and  
16 Safety Code, is amended to read as follows:

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

22 SECTION 8. Section 401.111, Health and Safety Code, is  
23 amended to read as follows:

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

25 (a) The [~~board and~~] commission [~~each~~], in adopting rules for the  
26 issuance of licenses under the commission's jurisdiction [~~their~~  
27 ~~respective jurisdictions~~] for new sites for processing or disposal

1 of radioactive substances [~~low-level radioactive waste~~] from other  
2 persons, shall adopt criteria for the designation of unsuitable  
3 sites, including:

- 4 (1) flood hazard areas;
- 5 (2) areas with characteristics of discharge from or  
6 recharge of a groundwater aquifer system; or
- 7 (3) areas in which soil conditions make spill cleanup  
8 impracticable.

9 (b) The [~~board and~~] commission [~~each~~] shall consult with the  
10 advisory board and with the Texas Water Development Board, the  
11 State Soil and Water Conservation Board, the Bureau of Economic  
12 Geology, and other appropriate state agencies in developing  
13 proposed rules. The [~~board and~~] commission [~~each~~] by rule shall:

- 14 (1) require selection of sites in areas in which  
15 natural conditions minimize potential contamination of surface  
16 water and groundwater; and
- 17 (2) prohibit issuance of licenses for unsuitable sites  
18 as defined by the rules.

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

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

- 27 (1) site suitability, geological, hydrological, and

1 meteorological factors, and natural ~~[naturals]~~ hazards;

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

4 (3) socioeconomic effects on surrounding communities  
5 of operation of the licensed activity and of associated  
6 transportation of low-level radioactive waste;

7 (4) the need for and alternatives to the proposed  
8 activity, including an alternative siting analysis prepared by the  
9 applicant;

10 (5) the applicant's qualifications, including  
11 financial and technical qualifications and compliance history  
12 under the method for evaluation of compliance history developed by  
13 the commission under Section 5.754, Water Code, for an application  
14 to the commission ~~[or the requirements of Section 401.110(b) for an~~  
15 ~~application to the department]~~;

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

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

19 (8) chemical, radiological, and biological  
20 characteristics of the low-level radioactive waste and waste  
21 classification under Section 401.053;

22 (9) adequate insurance of the applicant to cover  
23 potential injury to any property or person, including potential  
24 injury from risks relating to transportation;

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

26 (11) a monitoring, record-keeping, and reporting  
27 program;

1           (12) spill detection and cleanup plans for the  
2 licensed site and related to associated transportation of low-level  
3 radioactive waste;

4           (13) decommissioning and postclosure care plans;

5           (14) security plans;

6           (15) worker monitoring and protection plans;

7           (16) emergency plans; and

8           (17) a monitoring program for applicants that includes  
9 prelicense and postlicense monitoring of background radioactive  
10 and chemical characteristics of the soils, groundwater, and  
11 vegetation.

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

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

21           SECTION 10. Subsections (a) and (b), Section 401.113,  
22 Health and Safety Code, are amended to read as follows:

23           (a) Before a hearing under Section 401.114 begins, the  
24 commission [~~agency holding the hearing~~] shall prepare or have  
25 prepared a written analysis of the effect on the environment of a  
26 proposed licensed activity that the commission [~~agency~~] determines  
27 has a significant effect on the human environment.



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

4           SECTION 11. Section 401.114, Health and Safety Code, is  
5 amended to read as follows:

6           Sec. 401.114. NOTICE AND HEARING.       (a) Before the  
7 [~~department or~~] commission[~~, within its jurisdiction,~~] grants or  
8 renews a license to process or dispose of low-level radioactive  
9 waste from other persons, the commission [~~agency~~] shall give notice  
10 and shall provide an opportunity for a public hearing in the manner  
11 provided by the commission's [~~agency's~~] formal hearing procedure  
12 and Chapter 2001, Government Code.

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

18           (c) The commission [~~agency~~] shall mail, by certified mail in  
19 the manner provided by the commission's [~~agency's~~] rules, written  
20 notice to each person who owns property adjacent to the proposed  
21 site. The notice must be mailed not later than the 31st day before  
22 the date of the hearing and must include the same information that  
23 is in the published notice. If true, the commission [~~agency~~] or the  
24 applicant must certify that the notice was mailed as required by  
25 this subsection, and at the hearing the certificate is conclusive  
26 evidence of the mailing.

27           SECTION 12. Section 401.116, Health and Safety Code, is

amended to read as follows:

Sec. 401.116. LICENSE AMENDMENT. The commission shall adopt rules to establish requirements for public notice of and public participation in the amendment of a license issued under this subchapter, including both minor and major amendments, consistent with Section 401.054(c) ~~[(a) An amendment to a license to process or dispose of low-level radioactive waste from other persons may take effect immediately.~~

~~[(b) The department or commission, as appropriate, shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.~~

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

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

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

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

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

SECTION 13. Section 401.117, Health and Safety Code, is amended to read as follows:

Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~

1 commission shall prohibit major construction relating to  
2 activities to be permitted under a license issued by the commission  
3 ~~[agency]~~ to process or dispose of low-level radioactive waste from  
4 other persons until the requirements in Sections 401.113 and  
5 401.114 are completed.

6 SECTION 14. Subsection (a), Section 401.202, Health and  
7 Safety Code, is amended to read as follows:

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

12 SECTION 15. Subsections (a) and (b), Section 401.241,  
13 Health and Safety Code, are amended to read as follows:

14 (a) In determining the amount of security required of a  
15 ~~[compact waste disposal facility license]~~ holder of a license to  
16 dispose of radioactive substances under Section 401.109, the  
17 commission shall also consider the need for financial security to  
18 address and prevent unplanned events that pose a risk to public  
19 health and safety and that may occur after the decommissioning and  
20 closure of the radioactive substances ~~[compact waste]~~ disposal  
21 facility ~~[or a federal facility waste disposal facility licensed~~  
22 ~~under Section 401.216]~~.

23 (b) The amount of security required of a compact waste  
24 disposal facility license holder under this section may not be less  
25 than \$20 million at the time the disposal facility site is  
26 decommissioned. The commission shall use interest earned on the  
27 security to offset any other financial obligations incurred by the

1 license holder to the commission. The commission shall establish a  
2 schedule for the total payment of the amount of the security  
3 required under this section based on:

4 (1) the amount of low-level radioactive waste received  
5 at the site;

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

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

10 SECTION 16. Section 401.262, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL.  
13 The commission [~~department~~] has sole and exclusive authority to  
14 assure that processing and disposal sites are closed and that  
15 by-product material is managed and disposed of in compliance with:

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

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

20 SECTION 17. Section 401.2625, Health and Safety Code, is  
21 amended to read as follows:

22 Sec. 401.2625. LICENSING AUTHORITY. The commission  
23 [~~commissioner~~] has sole and exclusive authority to grant, deny,  
24 renew, revoke, suspend, amend, or withdraw licenses for source  
25 material recovery and processing or for storage, processing, or  
26 disposal of by-product material.

27 SECTION 18. Subsections (a), (c), (d), (e), and (f),

1 Section 401.263, Health and Safety Code, are amended to read as  
2 follows:

3 (a) If the commission [~~department~~] is considering the  
4 issuance, renewal, or amendment of a license to process materials  
5 that produce by-product materials or a license to dispose of  
6 by-product material and the commission [~~department~~] determines  
7 that the licensed activity will have a significant impact on the  
8 human environment, the commission [~~department~~] shall prepare or  
9 have prepared a written environmental analysis.

10 (c) The commission [~~department~~] shall give notice of the  
11 analysis as provided by commission [~~board~~] rule and shall make the  
12 analysis available to the public for written comment not later than  
13 the 31st day before the date of the hearing on the license.

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

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

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

23 SECTION 19. Subsections (a), (c), and (d), Section 401.264,  
24 Health and Safety Code, are amended to read as follows:

25 (a) The commission [~~department~~] on its own motion may or on  
26 the written request of a person affected shall provide an  
27 opportunity for a public hearing on an application over which the

commission [~~department~~] has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

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

(d) The commission [~~department~~] shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission [~~department~~] and include findings. The written determination is available to the public.

SECTION 20. Section 401.265, Health and Safety Code, is amended to read as follows:

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

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the commission [~~board~~] and that

1 are compatible with the federal commission's standards for sites at  
2 which those ores were processed and at which the by-product  
3 material is deposited; and

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

10 (A) the state; or

11 (B) the federal government if the state declines  
12 to acquire the site, the by-product material, or both the site and  
13 the by-product material.

14 SECTION 21. Subsection (a), Section 401.266, Health and  
15 Safety Code, is amended to read as follows:

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

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

25 (2) the land is held in trust by the federal government  
26 for an Indian tribe, is owned by an Indian tribe subject to a  
27 restriction against alienation imposed by the federal government,

1 is owned by the federal government, or is owned by the state.

2 SECTION 22. Section 401.267, Health and Safety Code, is  
3 amended to read as follows:

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

11 (b) The commission [~~department~~] may sell land acquired  
12 under this section at the land's fair market value after the  
13 commission [~~department~~] has taken corrective action to restore the  
14 land to a condition that does not compromise the public health or  
15 safety or the environment. The General Land Office shall negotiate  
16 and close a transaction under this subsection on behalf of the  
17 commission [~~department~~] using procedures under Section 31.158(c),  
18 Natural Resources Code. Proceeds from the transaction shall be  
19 deposited in the Texas capital trust fund.

20 SECTION 23. Section 401.269, Health and Safety Code, is  
21 amended to read as follows:

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



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

4           SECTION 24. Subsections (a), (b), (e), and (f), Section  
5 401.270, Health and Safety Code, are amended to read as follows:

6           (a) If the commission [~~department~~] finds that by-product  
7 material or the operation by which that by-product material is  
8 derived threatens the public health and safety or the environment,  
9 the commission [~~department~~] by order may require any action,  
10 including a corrective measure, that is necessary to correct or  
11 remove the threat.

12           (b) The commission [~~department~~] may issue an emergency  
13 order to a person responsible for an activity, including a past  
14 activity, concerning the recovery or processing of source material  
15 or the disposal of by-product material if it appears that there is  
16 an actual or threatened release of source material or by-product  
17 material that presents an imminent and substantial danger to the  
18 public health and safety or the environment, regardless of whether  
19 the activity was lawful at the time. The emergency order may be  
20 issued without notice or hearing.

21           (e) The commission [~~department~~] shall use the security  
22 provided by the license holder to pay the costs of actions that are  
23 taken or that are to be taken under this section. The commission  
24 [~~department~~] shall send to the comptroller a copy of its order  
25 together with necessary written requests authorizing the  
26 comptroller to:

27           (1) enforce security supplied by the licensee;

1           (2) convert an amount of security into cash, as  
2 necessary; and

3           (3) disburse from the security in the perpetual care  
4 account the amount necessary to pay the costs.

5           (f) If an order issued by the commission [~~department~~] under  
6 this section is adopted without notice or hearing, the order shall  
7 set a time, at least 10 but not more than 30 days following the date  
8 of issuance of the emergency order, and a place for a hearing to be  
9 held in accordance with the rules of the commission [~~board~~]. As a  
10 result of this hearing, the commission [~~department~~] shall decide  
11 whether to affirm, modify, or set aside the emergency order. All  
12 provisions of the emergency order shall remain in force and effect  
13 during the pendency of the hearing, unless otherwise altered by the  
14 commission [~~department~~].

15           SECTION 25. Subchapter G, Chapter 401, Health and Safety  
16 Code, is amended by adding Sections 401.271 and 401.272 to read as  
17 follows:

18           Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A  
19 holder of a license issued by the commission under this chapter that  
20 authorizes the disposal of a radioactive substance from other  
21 persons shall remit each quarter an amount equal to 10 percent of  
22 the license holder's gross receipts received from disposal  
23 operations under a license issued under this chapter that occur  
24 after the effective date of the Act enacting this section as  
25 follows:

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

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

3           (b) Subsection (a) does not apply to compact waste or  
4 federal facility waste as defined by Section 401.2005, or  
5 industrial solid waste as defined by Section 361.003.

6           Sec. 401.272. AUDIT AUTHORITY. The commission may audit a  
7 license holder's financial records and waste manifest information  
8 to ensure that the fees imposed under this chapter are accurately  
9 paid. The license holder shall comply with the commission's  
10 audit-related requests for information.

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

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

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

19                   (1) process applications for licenses or  
20 registrations;

21                   (2) amend or renew licenses or registrations;

22                   (3) make inspections of license holders and  
23 registrants; and

24                   (4) enforce this chapter and rules, orders, licenses,  
25 and registrations under this chapter.

26           (c) The commission and department may collect a fee, in  
27 addition to the annual license and registration fee, of not less

1 than 20 percent of the amount of the annual license and registration  
2 fee nor more than \$10,000 per annum from each licensee or registrant  
3 who fails to pay the fees authorized by this section.

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

10 (e) The commission and department shall suspend assessment  
11 of a fee imposed under Subsection (d) if the amount of fees  
12 collected under that subsection reaches \$500,000. If the balance  
13 of fees collected subsequently is reduced to \$350,000 or less, the  
14 commission and department shall reinstitute assessment of the fee  
15 until the balance reaches \$500,000.

16 (f) The commission may assess and collect additional fees  
17 from the applicant to recover the costs the commission incurs for  
18 administrative review, technical review, and hearings on the  
19 application.

20 SECTION 27. Subsection (a), Section 401.302, Health and  
21 Safety Code, is amended to read as follows:

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

26 SECTION 28. Subsections (c), (e), (f), and (g), Section  
27 401.305, Health and Safety Code, are amended to read as follows:

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

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

10               (1) to prevent or mitigate the adverse effects of  
11 abandonment of radioactive substances [~~materials~~], default on a  
12 lawful obligation, insolvency, or other inability by the holder of  
13 a license issued by the department or commission to meet the  
14 requirements of this chapter or of department or commission rules;  
15 and

16               (2) to assure the protection of the public health and  
17 safety and the environment from the adverse effects of ionizing  
18 radiation.

19           (f) The department or commission may provide, by the terms  
20 of a contract or lease entered into between the department or  
21 commission and any person or by the terms of a license issued by the  
22 department or commission to any person, for the decontamination,  
23 closure, decommissioning, reclamation, surveillance, or other care  
24 of a site or facility subject to department or commission  
25 jurisdiction under this chapter as needed to carry out the purpose  
26 of this chapter.

27           (g) The existence of the perpetual care account does not

1 make the department or commission liable for the costs of  
 2 decontamination, transfer, transportation, reclamation,  
 3 surveillance, or disposal of radioactive substances ~~[material]~~  
 4 arising from a license holder's abandonment of radioactive  
 5 substances ~~[material]~~, default on a lawful obligation, insolvency,  
 6 or inability to meet the requirements of this chapter or of  
 7 department or commission rules.

8 SECTION 29. Section 401.343, Health and Safety Code, is  
 9 amended to read as follows:

10 Sec. 401.343. RECOVERY OF SECURITY. (a) The department or  
 11 commission shall seek reimbursement, either by an order of the  
 12 department or commission or a suit filed by the attorney general at  
 13 the ~~[department's]~~ request of the department or commission, of  
 14 security from the perpetual care account used by the department or  
 15 commission to pay for actions, including corrective measures, to  
 16 remedy spills or contamination by radioactive substances  
 17 ~~[material]~~ resulting from a violation of this chapter relating to  
 18 an activity under the ~~[department's]~~ jurisdiction of the department  
 19 or commission or a violation of a rule, license, registration, or  
 20 order adopted or issued by the department or commission under this  
 21 chapter.

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

24 SECTION 30. The heading to Subchapter K, Chapter 401,  
 25 Health and Safety Code, is amended to read as follows:

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

SECTION 31. Subsections (a) and (b), Section 401.412, Health and Safety Code, are amended to read as follows:

(a) Notwithstanding any other provision of this chapter and subject to Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances. [~~In this subsection, "radioactive substance" does not include by-product material as defined by Section 401.003(3)(B).~~]

(b) Notwithstanding any other provision of this chapter, the commission [~~commissioner~~] has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or disposal of by-product material under Subchapter G.

SECTION 32. Section 401.413, Health and Safety Code, is amended to read as follows:

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

SECTION 33. Section 401.414, Health and Safety Code, is amended to read as follows:

Sec. 401.414. MEMORANDA [~~MEMORANDUM~~] OF UNDERSTANDING. The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, the Health and Human Services Commission, and the Railroad Commission of Texas [~~and the board of health~~] by rule shall adopt memoranda [~~a memorandum~~] of understanding defining their respective duties under this chapter.

SECTION 34. Section 401.415, Health and Safety Code, is amended by amending Subsections (a), (d), and (e) and adding Subsection (f) to read as follows:

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

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

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

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

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

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



section.

(e) To ensure that the State of Texas retains its Agreement Status with the U.S. Nuclear Regulatory Commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, including rules governing processing, storage, and disposal of the waste, decontamination and maintenance of oil-field equipment, and fees established pursuant to Subsection (a). In developing those rules, the railroad commission ~~[and in so doing]~~ shall consult with the commission ~~[Texas Natural Resource Conservation Commission]~~ and the department ~~[Department of Health]~~ regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules of the commission applicable to processing, storage, and disposal of other NORM wastes having similar properties, quantities, and distribution~~[, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes]~~.

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

1 railroad commission's oil and gas NORM program under this section.

2 SECTION 35. Section 361.015, Health and Safety Code, is  
3 amended to read as follows:

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

8 (b) Except as provided by Subsection (a), the Health and  
9 Human Services Commission, acting through the Department of State  
10 Health Services or other department as designated by the executive  
11 commissioner of the Health and Human Services Commission, [The  
12 Texas Department of Health] is the state agency under Chapter 401  
13 that regulates radioactive waste activities~~[, excluding disposal,]~~  
14 not preemptively regulated by the federal government.

15 (c) The Railroad Commission of Texas is the state agency  
16 that licenses and regulates the possession, storage, processing,  
17 handling, and disposal of oil and gas NORM waste and the  
18 decontamination and maintenance of oil-field equipment.

19 SECTION 36. Subchapter B, Chapter 27, Water Code, is  
20 amended by adding Section 27.023 to read as follows:

21 Sec. 27.023. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF  
22 RADIOACTIVE SUBSTANCES. (a) As a component of an injection well  
23 permit, the commission may issue an authorization for in situ  
24 mining of radioactive substances in a specified production area.  
25 The authorization may not contain a provision that requires any  
26 additional approval of the commission or any additional hearing for  
27 the permit holder to conduct minor in situ mining in the production

1 area. The commission by rule shall define the difference between  
 2 major and minor in situ mining.

3 (b) On or after the effective date of the Act enacting this  
 4 section, a rule or provision of a permit or order of the commission  
 5 that requires additional approval of the commission or an  
 6 additional hearing for the permit holder to conduct minor in situ  
 7 mining in the production area specified in an injection well permit  
 8 is not effective. Notwithstanding any provision of this code or of  
 9 a commission rule or order, an application for minor in situ  
 10 authorization is not subject to a contested case hearing,  
 11 regardless of when the application is submitted.

12 (c) This section does not affect the authority of the  
 13 commission to:

14 (1) revoke, suspend, or amend a permit issued under  
 15 this chapter;

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

18 (3) enforce a provision of a permit issued under this  
 19 chapter.

20 (d) The change in law made by this section does not affect  
 21 any matter that is a subject of litigation on or before November 1,  
 22 2005. An administrative law judge presiding over a licensure  
 23 proceeding under this section shall expedite the procedures  
 24 necessary to complete the hearing in a timely manner.

25 SECTION 37. (a) On the earlier of the 31st day after the  
 26 effective date of this Act or November 1, 2005, the following  
 27 rights, powers, duties, obligations, functions, activities,

1 property, programs, and appropriations are transferred to the Texas  
2 Commission on Environmental Quality:

3 (1) all rights, powers, duties, obligations,  
4 functions, and activities:

5 (A) that Chapter 401, Health and Safety Code,  
6 assigns to the Texas Department of Health, the Texas Board of  
7 Health, or their successor agencies or to the governing body,  
8 officers, or employees of that department, that board, or their  
9 successor agencies, including the Health and Human Services  
10 Commission and the Department of State Health Services; and

11 (B) that are related to licensing and regulation  
12 of:

13 (i) radioactive substances recovery,  
14 storage, processing, and disposal; or

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

17 (2) all equipment, information, documents,  
18 facilities, and other property of the Health and Human Services  
19 Commission or the Department of State Health Services pertaining to  
20 licensing and regulation of:

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

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

27 (3) all appropriations for the state fiscal biennium

1 that begins September 1, 2005, made to the Health and Human  
2 Services Commission or the Department of State Health Services for  
3 activities related to licensing and regulation of:

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

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

10 (4) the unexpended and unobligated portions of the  
11 appropriations for the state fiscal biennium beginning  
12 September 1, 2003, made to the Health and Human Services Commission  
13 or the Department of State Health Services for activities described  
14 by Subdivision (3) of this subsection.

15 (b) Appropriations transferred under Subdivision (4),  
16 Subsection (a) of this section, are transferred for the remainder  
17 of that state fiscal biennium.

18 (c) The Texas Commission on Environmental Quality, as of the  
19 date of the transfer prescribed by Subsection (a) of this section,  
20 has full responsibility for the administration and enforcement of  
21 laws related to licensing or regulation of radioactive substances  
22 recovery, storage, processing, and disposal under the jurisdiction  
23 of the commission as provided by Subsection (b), Section 401.011,  
24 Health and Safety Code, as amended by this Act, and licensing or  
25 regulation of long-term care of decommissioned sites for the  
26 disposal of by-product material. The Texas Commission on  
27 Environmental Quality shall carry out all related duties,

1 responsibilities, functions, and activities as provided by law,  
2 including those assigned by any other Acts of the 79th Legislature,  
3 Regular Session or 1st Called Session, 2005.

4 (d) The transfer of rights, powers, duties, obligations,  
5 functions, activities, property, and programs of the Health and  
6 Human Services Commission or the Department of State Health  
7 Services to the Texas Commission on Environmental Quality made by  
8 this Act does not affect or impair any act done or obligation,  
9 right, license, permit, requirement, or penalty accrued or existing  
10 under the former law; that law remains in effect for the purposes of  
11 any action concerning such an act done or obligation, right,  
12 license, permit, requirement, or penalty. The Texas Commission on  
13 Environmental Quality shall continue a proceeding of the Health and  
14 Human Services Commission or the Department of State Health  
15 Services that is related to a responsibility, duty, activity,  
16 function, or program transferred by this Act, including processing  
17 an application for a license or other authorization and including  
18 enforcing the requirements of Chapter 401, Health and Safety Code,  
19 or a rule adopted under that chapter. A rule of the Health and Human  
20 Services Commission or the Department of State Health Services  
21 related to a responsibility, duty, activity, function, or program  
22 transferred by this Act is enforceable as a rule of the Texas  
23 Commission on Environmental Quality until the Texas Commission on  
24 Environmental Quality adopts other rules.

25 (e) Control of and title to all property and material  
26 acquired by this state or an agency of this state under Section  
27 401.267, Health and Safety Code, before the effective date of this

1 Act shall be transferred to the Texas Commission on Environmental  
2 Quality on this state's behalf as soon as practicable. This section  
3 does not apply to property or material sold by the state under  
4 Subsection (b) of that section before the effective date of this  
5 Act.

6 (f) The Texas Commission on Environmental Quality shall  
7 provide an opportunity for employees of the Health and Human  
8 Services Commission or the Department of State Health Services who  
9 have performed duties related to a right, power, duty, obligation,  
10 responsibility, function, activity, or program transferred by this  
11 Act to request a transfer to commission employment. In making  
12 employment decisions under this subsection, the Texas Commission on  
13 Environmental Quality shall:

14 (1) ensure that state and federal requirements are met  
15 by commission employees; and

16 (2) consider the value of maintaining continuity in  
17 the personnel staffing relevant programs.

18 (g) The Texas Commission on Environmental Quality, the  
19 Health and Human Services Commission, and the Department of State  
20 Health Services by interagency agreement or contract shall  
21 cooperate in preventing any delay that may be caused by or may occur  
22 in the transfer of property or personnel or a right, power, duty,  
23 obligation, responsibility, function, activity, or program made by  
24 this Act.

25 (h) The transfers made by this Act do not affect any matter  
26 that is the subject of litigation pending on the effective date of  
27 this Act.

1           (i) The Texas Commission on Environmental Quality shall  
2 continue any applications review or processing and any hearings  
3 that concern a matter subject to transfer under Subsection (a) of  
4 this section that, on the date of the transfer, is being conducted  
5 by the Health and Human Services Commission or the Department of  
6 State Health Services or their successor agencies. The agencies  
7 shall cooperate and consult with each other to ensure that any delay  
8 necessitated by the transfer is minimized to the greatest extent  
9 possible. The Texas Commission on Environmental Quality shall  
10 utilize progress made on any technical review or environmental  
11 analysis conducted by the department prior to the effective date of  
12 this Act.

13           (j) An application for the renewal or amendment of a license  
14 to recover or process source material and to dispose of the  
15 associated by-product material that was received prior to January  
16 1, 2005, and is pending with the Department of State Health Services  
17 on August 31, 2005, is considered, based on federal requirements,  
18 approved by the Texas Commission on Environmental Quality on  
19 September 1, 2006, unless the Texas Commission on Environmental  
20 Quality before that date determines that the application should not  
21 be approved because of a health or safety emergency or because the  
22 applicant substantially fails to meet application requirements.

23           (k) On or before the earlier of the 31st day after the  
24 effective date of this Act or November 30, 2005, the Department of  
25 State Health Services shall:

26                 (1) approve any pending remediation plan that is  
27 subject to the transfer required under this section, according to



1 federal requirements;

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

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

8 (1) A remediation plan that is subject to the transfer  
9 required under this section the approval of which is pending with  
10 the Department of State Health Services on the earlier of the 31st  
11 day after the effective date of this Act or November 30, 2005, is  
12 considered, based on federal requirements, approved by the  
13 department on the earlier of the 90th day after the effective date  
14 of this Act or December 31, 2005, unless the department or the Texas  
15 Commission on Environmental Quality before that date determines  
16 that the plan should not be approved because of a health or safety  
17 emergency or because the plan substantially fails to meet  
18 requirements for approval.

19 (m) Notwithstanding the changes to Chapter 401, Health and  
20 Safety Code, made by this Act, the Department of State Health  
21 Services shall retain jurisdiction over, and render a final  
22 decision on, an application for an amended license to store or  
23 process radioactive substances that was filed with the department  
24 on or before January 1, 2005, and that has been referred to the  
25 State Office of Administrative Hearings by the department before  
26 the effective date of this Act. A license application subject to  
27 this subsection is governed only by the laws of the state and the

1 rules and regulations of the department effective at the time the  
2 application was filed. Once a final decision is rendered by the  
3 department, jurisdiction over any license issued shall be  
4 transferred to the Texas Commission on Environmental Quality.

5 (n) An application for a new license to dispose of  
6 by-product material that is filed with the Department of State  
7 Health Services on or before January 1, 2005, and that has not been  
8 referred to the State Office of Administrative Hearings by the  
9 department before the effective date of this Act shall be processed  
10 by the Texas Commission on Environmental Quality following the  
11 effective date of this Act as follows:

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

15 (2) if this Act takes effect immediately, the  
16 commission shall complete any technical review of a license  
17 application subject to this subsection and issue a draft permit no  
18 later than March 1, 2006. If this Act takes effect on November 1,  
19 2005, the commission shall complete any technical review of a  
20 license application subject to this subsection and issue a draft  
21 permit no later than April 15, 2006. The commission shall utilize  
22 progress made on any technical review or environmental analysis  
23 conducted by the department before the effective date of this Act.  
24 In order to meet the applicable deadline above, the commission may  
25 contract with the department or other entities for completion of  
26 any portion of the technical review that has not been completed upon  
27 the effective date of this Act. The commission may assess and

1 collect additional fees from the applicant to recover costs the  
2 commission incurs for technical review of a license application  
3 subject to this subsection;

4 (3) if this Act takes effect immediately, the  
5 commission shall render a final decision on a license application  
6 subject to this subsection no later than March 1, 2007. If this Act  
7 takes effect on November 1, 2005, the commission shall render a  
8 final decision on a license application subject to this subsection  
9 no later than April 15, 2007; and

10 (4) a contested case hearing held on a license  
11 application subject to this subsection that was filed with the  
12 department on or before January 1, 2005, may not exceed one year in  
13 duration, measured from the date of referral by the commission of  
14 the application to the State Office of Administrative Hearings  
15 until the commission makes a final decision on the application.  
16 Discovery in such a hearing shall be limited to not more than 60  
17 days in order to meet this limitation. Notice of hearing shall be  
18 provided to the applicant, the office of public interest counsel,  
19 the executive director of the commission, and the person who timely  
20 requested a contested case hearing by mail at least 10 days in  
21 advance of the hearing.

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

26 (b) On the effective date of this Act, a condition of a  
27 license that would subject the license holder to a civil or

1 administrative penalty for the license holder's failure to transfer  
2 by-product material to certain disposal sites by a certain date is  
3 void.

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

9 (b) The Texas Commission on Environmental Quality shall  
10 give priority to the processing and review of a license application  
11 described by Subsection (a) of this section over all other  
12 applications that pertain to radioactive substances or radioactive  
13 waste pending before the commission except for those applications  
14 the executive director of the Texas Commission on Environmental  
15 Quality determines are necessarily of a higher priority to avert or  
16 address an emergency concerning the public health or safety.

17 (c) Subject to the priority given under Subsection (b) of  
18 this section to the application, the Texas Commission on  
19 Environmental Quality shall give priority to the review and  
20 processing of:

21 (1) an application for the commercial disposal of  
22 by-product material;

23 (2) an application for termination of a license to  
24 recover or process source material and dispose of associated  
25 by-product material generated in this state; and

26 (3) a new application for a permit to recover or  
27 process source material and dispose of associated by-product

1 material generated in this state.

2         SECTION 40. Notwithstanding other law or any rule on the  
3 subject of timeliness of an applicant providing information  
4 pertaining to an application for a license from the Texas  
5 Commission on Environmental Quality, the applicant for a license  
6 shall assist the commission in meeting any deadlines imposed by  
7 Chapter 401, Health and Safety Code, by submitting to the  
8 commission any information the commission requires regarding the  
9 application in a prompt and timely manner.

10         SECTION 41. (a) On the earlier of the 31st day after the  
11 effective date of this Act or November 1, 2005:

12                 (1) all money appropriated to the Department of State  
13 Health Services for the regulation of the commercial storage and  
14 processing and the disposal of radioactive waste, except money  
15 related to the regulation of oil and gas naturally occurring  
16 radioactive material waste, is transferred to the Texas Commission  
17 on Environmental Quality, including \$447,608 out of the General  
18 Revenue Fund in each fiscal year of the state fiscal biennium  
19 beginning September 1, 2005; and

20                 (2) eight full-time equivalent employees of the  
21 Department of State Health Services working in the regulation of  
22 the commercial storage and processing and the disposal of  
23 radioactive waste, except those employees whose work is related to  
24 the regulation of oil and gas naturally occurring radioactive  
25 material waste, are transferred to the Texas Commission on  
26 Environmental Quality.

27         (b) Fee revenues deposited to the credit of the General

1 Revenue Fund (No. 0001), Revenue Code 3589, are appropriated to the  
2 Texas Commission on Environmental Quality in the amounts not to  
3 exceed \$1,181,156 for the state fiscal year beginning September 1,  
4 2005, and not to exceed \$1,064,656 for the state fiscal year  
5 beginning September 1, 2006.

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

9 (d) The number of full-time equivalent employees authorized  
10 for the Texas Commission on Environmental Quality is increased by  
11 eight for each fiscal year of the state fiscal biennium beginning  
12 September 1, 2005.

13 (e) The governor with the advice of the Legislative Budget  
14 Board may resolve any disputes concerning the transfer of  
15 appropriations and employees from the Department of State Health  
16 Services to the Texas Commission on Environmental Quality under  
17 this Act.

18 SECTION 42. This Act takes effect immediately if it  
19 receives a vote of two-thirds of all the members elected to each  
20 house, as provided by Section 39, Article III, Texas Constitution.  
21 If this Act does not receive the vote necessary for immediate  
22 effect, this Act takes effect November 1, 2005.