

By: Duncan

S.B. No. 40

A BILL TO BE ENTITLED

AN ACT

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

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), and (6) and 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, 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 401.054, Health and Safety Code, is  
5 amended to read as follows:

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

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

14                    (2) the determination by the department or commission  
15 of compliance with or the grant of exemptions from a department or  
16 commission rule or order; or

17                    (3) the grant or amendment by the department or  
18 commission of a specific license.

19            (b) The commission may hold a contested case hearing on a  
20 license application under this chapter on the commission's  
21 determination that a timely written request for a contested case  
22 hearing was filed by a person affected. The determination of who is  
23 a person affected under this chapter is governed exclusively ~~[This~~  
24 ~~section does not apply to license or registration activities for~~  
25 ~~which other notice and hearing procedures are required]~~ by this  
26 chapter.

27            (c) The commission may hold a contested case hearing on an

1 application for the renewal of or an amendment of a license issued  
2 under this chapter if a change is being requested that would  
3 constitute a major amendment and a person affected requests the  
4 hearing.

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

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

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

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

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

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

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

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

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

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

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

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

22               (1) flood hazard areas;

23               (2) areas with characteristics of discharge from or  
24 recharge of a groundwater aquifer system; or

25               (3) areas in which soil conditions make spill cleanup  
26 impracticable.

27          (b) The [~~board and~~] commission [~~each~~] shall consult with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22          (13) decommissioning and postclosure care plans;

23          (14) security plans;

24          (15) worker monitoring and protection plans;

25          (16) emergency plans; and

26          (17) a monitoring program for applicants that includes  
27 prelicense and postlicense monitoring of background radioactive

1 and chemical characteristics of the soils, groundwater, and  
2 vegetation.

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

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

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

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

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

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

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



and shall provide an opportunity for a public hearing in the manner provided by the commission's ~~[agency's]~~ formal hearing procedure and Chapter 2001, Government Code.

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

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

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 ~~[(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~~

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

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

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

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

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

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

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

17 Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~  
18 commission shall prohibit major construction relating to  
19 activities to be permitted under a license issued by the commission  
20 ~~[agency]~~ to process or dispose of low-level radioactive waste from  
21 other persons until the requirements in Sections 401.113 and  
22 401.114 are completed.

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

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

persons and for the processing of that waste.

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

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

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

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

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

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

SECTION 16. Section 401.262, Health and Safety Code, is

1 amended to read as follows:

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

- 6               (1) the federal commission's applicable standards; and  
7               (2) closure criteria the federal commission and the  
8 United States Environmental Protection Agency have determined are  
9 protective of human health and safety and the environment.

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

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

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

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

27       (c) The commission [~~department~~] shall give notice of the

1 analysis as provided by commission [~~board~~] rule and shall make the  
2 analysis available to the public for written comment not later than  
3 the 31st day before the date of the hearing on the license.

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

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

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

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

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

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

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

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

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

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

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

27           (A) the state; or

1 (B) the federal government if the state declines  
2 to acquire the site, the by-product material, or both the site and  
3 the by-product material.

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

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

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

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

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

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

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

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

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

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

21           SECTION 24. Subsections (a), (b), (e), and (f), Section  
22 401.270, Health and Safety Code, are amended to read as follows:

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



1 remove the threat.

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

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

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

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

whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission ~~[department]~~.

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

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

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

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

(b) Subsection (a) does not apply to compact waste as defined by Section 401.2005(1), federal facility waste as defined in Section 401.2005(4), or industrial solid waste as defined by Section 361.003.

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. The license holder shall comply with the commission's

1 audit-related requests for information.

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

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

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

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

12 (2) amend or renew licenses or registrations;

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

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

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

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

1           (e) The commission and department shall suspend assessment  
2 of a fee imposed under Subsection (d) if the amount of fees  
3 collected under that subsection reaches \$500,000. If the balance  
4 of fees collected subsequently is reduced to \$350,000 or less, the  
5 commission and department shall reinstitute assessment of the fee  
6 until the balance reaches \$500,000.

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

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

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

17           SECTION 28. Subsections (c), (e), (f), and (g), Section  
18 401.305, Health and Safety Code, are amended to read as follows:

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

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

1           (1) to prevent or mitigate the adverse effects of  
2 abandonment of radioactive substances [~~materials~~], default on a  
3 lawful obligation, insolvency, or other inability by the holder of  
4 a license issued by the department or commission to meet the  
5 requirements of this chapter or of department or commission rules;  
6 and

7           (2) to assure the protection of the public health and  
8 safety and the environment from the adverse effects of ionizing  
9 radiation.

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

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

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

1           Sec. 401.343. RECOVERY OF SECURITY. (a) The department or  
2 commission shall seek reimbursement, either by an order of the  
3 department or commission or a suit filed by the attorney general at  
4 the ~~[department's]~~ request of the department or commission, of  
5 security from the perpetual care account used by the department or  
6 commission to pay for actions, including corrective measures, to  
7 remedy spills or contamination by radioactive substances  
8 ~~[material]~~ resulting from a violation of this chapter relating to  
9 an activity under the ~~[department's]~~ jurisdiction of the department  
10 or commission or a violation of a rule, license, registration, or  
11 order adopted or issued by the department or commission under this  
12 chapter.

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

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

17           SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS ~~[NATURAL RESOURCE~~  
18 ~~CONSERVATION]~~ COMMISSION ON ENVIRONMENTAL QUALITY

19                           AND THE RAILROAD COMMISSION OF TEXAS

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

22           (a) Upon the transfer of the rights, powers, duties,  
23 obligations, functions, and activities related to the regulation  
24 and licensing of the disposal of radioactive substances from the  
25 department to the commission, and notwithstanding  
26 ~~[Notwithstanding]~~ any other provision of this chapter and subject  
27 to Sections 401.102 and 401.415, the commission has sole and

1 exclusive authority to directly regulate and to grant, deny, renew,  
2 revoke, suspend, amend, or withdraw licenses for the disposal of  
3 radioactive substances. ~~[In this subsection, "radioactive~~  
4 ~~substance" does not include by-product material as defined by~~  
5 ~~Section 401.003(3)(B).]~~

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

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

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

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

27 Sec. 401.414. MEMORANDA ~~[MEMORANDUM]~~ OF UNDERSTANDING. The

1 Texas [~~Natural Resource Conservation~~] Commission on Environmental  
2 Quality, the Health and Human Services Commission, and the Railroad  
3 Commission of Texas [~~and the board of health~~] by rule shall adopt  
4 memoranda [~~a memorandum~~] of understanding defining their  
5 respective duties under this chapter.

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

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

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

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

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

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

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

26 (e) To ensure that the State of Texas retains its Agreement  
27 Status with the U.S. Nuclear Regulatory Commission, and to ensure



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

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

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

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

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

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

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

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

27          (b) On or after the effective date of the Act enacting this

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

9 (c) This section does not affect the authority of the  
10 commission to:

11 (1) revoke, suspend, or amend a permit issued under  
12 this chapter;

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

15 (3) enforce a provision of a permit issued under this  
16 chapter.

17 (d) The change in law made by this section does not affect  
18 any matter that is a subject of litigation on or before November 1,  
19 2005. An administrative law judge presiding over a licensure  
20 proceeding under this section shall expedite the procedures  
21 necessary to complete the hearing in a timely manner.

22 SECTION 37. (a) An application for a new license to  
23 dispose of by-product material that is filed with the Department of  
24 State Health Services on or before January 1, 2005, shall be  
25 processed as follows:

26 (1) a license application subject to this subsection  
27 shall be governed only by the rules and regulations of the

1 department effective at the time such application was filed;

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

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

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

18 (b) On the 30th day following the Department of State Health  
19 Services' final decision regarding a license application subject to  
20 Subsection (a) of this section, the following rights, powers,  
21 duties, obligations, functions, activities, property, programs,  
22 and appropriations are transferred to the Texas Commission on  
23 Environmental Quality:

24 (1) all rights, powers, duties, obligations,  
25 functions, and activities:

26 (A) that Chapter 401, Health and Safety Code,  
27 assigns to the Texas Department of Health, the Texas Board of

1 Health, or their successor agencies or to the governing body,  
2 officers, or employees of that department, that board, or their  
3 successor agencies, including the Health and Human Services  
4 Commission and the Department of State Health Services; and

5 (B) that are related to licensing and regulation  
6 of:

7 (i) radioactive substances recovery,  
8 storage, processing, and disposal; or

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

11 (2) all equipment, information, documents,  
12 facilities, and other property of the Health and Human Services  
13 Commission or the Department of State Health Services pertaining to  
14 licensing and regulation of:

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

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

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

25 (A) radioactive substances recovery, storage,  
26 processing, and disposal under the jurisdiction of the Texas  
27 Commission on Environmental Quality as provided by Subsection (b),

1 Section 401.011, Health and Safety Code, as amended by this Act; or

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

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

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

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

25 (e) The transfer of rights, powers, duties, obligations,  
26 functions, activities, property, and programs of the Health and  
27 Human Services Commission or the Department of State Health

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

19 (f) Control of and title to all property and material  
20 acquired by this state or an agency of this state under Section  
21 401.267, Health and Safety Code, before the effective date of this  
22 Act shall be transferred to the Texas Commission on Environmental  
23 Quality on this state's behalf as soon as practicable. This section  
24 does not apply to property or material sold by the state under  
25 Subsection (b) of that section before the effective date of this  
26 Act.

27 (g) The Texas Commission on Environmental Quality shall

1 provide an opportunity for employees of the Health and Human  
2 Services Commission or the Department of State Health Services who  
3 have performed duties related to a right, power, duty, obligation,  
4 responsibility, function, activity, or program transferred by this  
5 Act to request a transfer to commission employment. In making  
6 employment decisions under this subsection, the Texas Commission on  
7 Environmental Quality shall:

8 (1) ensure that state and federal requirements are met  
9 by commission employees; and

10 (2) consider the value of maintaining continuity in  
11 the personnel staffing relevant programs.

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

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

22 (j) The Texas Commission on Environmental Quality shall  
23 continue any applications review or processing and any hearings  
24 that concern a matter subject to transfer under Subsection (b) of  
25 this section that, on the date of the transfer, is being conducted  
26 by the Health and Human Services Commission or the Department of  
27 State Health Services or their successor agencies. The agencies



1 shall cooperate and consult with each other to ensure that any delay  
2 necessitated by the transfer is minimized to the greatest extent  
3 possible. The Texas Commission on Environmental Quality shall  
4 utilize progress made on any technical review or environmental  
5 analysis conducted by the department prior to the effective date of  
6 this Act.

7 (k) An application for the renewal or amendment of a license  
8 to recover or process source material and to dispose of the  
9 associated by-product material that was received prior to January  
10 1, 2005, and is pending with the Department of State Health Services  
11 on October 31, 2005, is considered, based on federal requirements,  
12 approved by the Department of State Health Services on January 1,  
13 2007, unless the Department of State Health Services before that  
14 date determines that the application should not be approved because  
15 of a health or safety emergency or because the applicant  
16 substantially fails to meet application requirements.

17 (1) By January 1, 2007, the Department of State Health  
18 Services shall:

19 (1) approve any pending remediation plan that is  
20 subject to the transfer required under this section, according to  
21 federal requirements;

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

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

1           (m) A remediation plan that is subject to the transfer  
2 required under this section the approval of which is pending with  
3 the Department of State Health Services on January 1, 2007, is  
4 considered, based on federal requirements, approved by the  
5 department on January 1, 2007, unless the department or the Texas  
6 Commission on Environmental Quality before that date determines  
7 that the plan should not be approved because of a health or safety  
8 emergency or because the plan substantially fails to meet  
9 requirements for approval.

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

23           (o) Prior to the transfer of the rights, powers, duties,  
24 obligations, functions, and activities related to the regulation  
25 and licensing of the disposal of radioactive substances from the  
26 Department of State Health Services to the Texas Commission on  
27 Environmental Quality under Subsection (b) of this section, the

1 department shall provide the commission with the opportunity to  
2 comment on the development and drafting of license conditions  
3 related to the technical requirements for the disposal of  
4 radioactive substances. Upon the transfer of the rights, powers,  
5 duties, obligations, functions, and activities related to the  
6 regulation and licensing of the disposal of radioactive substances  
7 from the department to the commission under Subsection (b) of this  
8 section, the commission may initiate an amendment or a modification  
9 to a license issued by the department.

10 SECTION 38. (a) In the event that the Department of State  
11 Health Services does not render a final determination on a license  
12 application subject to Subsection (a), Section 37 of this Act, in a  
13 timely manner in accordance with Subsection (b), Section 37 of this  
14 Act, the department shall remain responsible for rendering a final  
15 determination on the license application.

16 SECTION 39. (a) In this section, "license" means a license  
17 that authorizes the license holder to receive, process, store, and  
18 transfer by-product material, as defined by Paragraph (B),  
19 Subdivision (3), Section 401.003, Health and Safety Code.

20 (b) On the effective date of this Act, a condition of a  
21 license that would subject the license holder to a civil or  
22 administrative penalty for the license holder's failure to transfer  
23 by-product material to certain disposal sites by a certain date is  
24 void.

25 SECTION 40. (a) This Act does not impair, delay, or affect  
26 the priority established by law for processing and review of the  
27 application for a license to dispose of low-level radioactive waste

1 that was filed with the Texas Commission on Environmental Quality  
2 before January 1, 2005.

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

11 (c) The Department of State Health Services shall, in the  
12 following order, give priority to the review and processing of:

13 (1) an application for the renewal or amendment of a  
14 license 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;

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

20 (3) a new application for a permit to recover or  
21 process source material and dispose of associated by-product  
22 material generated in this state.

23 (d) Upon the transfer of the rights, powers, duties,  
24 obligations, functions, and activities related to the regulation  
25 and licensing of the disposal of radioactive substances from the  
26 Department of State Health Services to the Texas Commission on  
27 Environmental Quality, and subject to the priority given under

1 Subsections (a) and (b) of this section, the Texas Commission on  
2 Environmental Quality shall give priority to the review and  
3 processing of applications pursuant to Subsection (c) of this  
4 section.

5 SECTION 41. Notwithstanding other law or any rule on the  
6 subject of timeliness of an applicant providing information  
7 pertaining to an application for a license from the Texas  
8 Commission on Environmental Quality, the applicant for a license  
9 shall assist the commission in meeting any deadlines imposed by  
10 Chapter 401, Health and Safety Code, by submitting to the  
11 commission any information the commission requires regarding the  
12 application in a prompt and timely manner.

13 SECTION 42. (a) Pursuant to the transfer schedule in  
14 Subsection (b), Section 37 of this Act:

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

23 (2) eight full-time equivalent employees of the  
24 Department of State Health Services working in the regulation of  
25 the commercial storage and processing and the disposal of  
26 radioactive waste, except those employees whose work is related to  
27 the regulation of oil and gas naturally occurring radioactive

1 material waste, are transferred to the Texas Commission on  
2 Environmental Quality.

3 (b) Fee revenues deposited to the credit of the General  
4 Revenue Fund (No. 0001), Revenue Code 3589, are appropriated to the  
5 Texas Commission on Environmental Quality in the amounts not to  
6 exceed \$1,181,156 for the state fiscal year beginning September 1,  
7 2005, and not to exceed \$1,064,656 for the state fiscal year  
8 beginning September 1, 2006.

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

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

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

21 SECTION 43. (a) The following sections of this Act shall  
22 become effective on the effective date of this Act:

- 23 (1) Section 1;
- 24 (2) Section 25;
- 25 (3) Section 26;
- 26 (4) Section 27;
- 27 (5) Section 36;

- 1           (6)   Section 37;
- 2           (7)   Section 38;
- 3           (8)   Section 39;
- 4           (9)   Section 40;
- 5           (10)   Section 41;
- 6           (11)   Section 42; and
- 7           (12)   Section 43.

8           (b)   All other sections of this Act become effective pursuant  
9   to Subsection (b), Section 37 of this Act.

10          SECTION 44. This Act takes effect immediately if it  
11   receives a vote of two-thirds of all the members elected to each  
12   house, as provided by Section 39, Article III, Texas Constitution.  
13   If this Act does not receive the vote necessary for immediate  
14   effect, this Act takes effect November 1, 2005.