

BILL ANALYSIS

C.S.S.B. 1667
By: Duncan
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently there are two agencies regulating the disposal of radioactive waste, except oil and gas naturally occurring radioactive material (NORM) waste. In general, there is a lack of state revenue from the disposal of all types of radioactive waste.

C.S.S.B. 1667 transfers jurisdiction over the disposal of all radioactive waste, except oil and gas NORM waste, to the Texas Commission on Environmental Quality (TCEQ). TCEQ currently has jurisdiction over low-level radioactive waste.

C.S.S.B. 1667 implements a fee on license holder gross receipts to be charged for the disposal of all radioactive waste, other than oil and gas NORM and low-level radioactive waste. These funds are to be deposited each calendar quarter to the general revenue fund.

C.S.S.B. 1667 also allows for a radioactivity surcharge to be collected from a license holder for the disposal of radioactive waste. This surcharge would not be applicable to the disposal of compact low-level radioactive waste. The amount of revenue collected from this surcharge would be deposited each calendar quarter into the general revenue fund.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1, 4, 7, 8, 10, 11, 17, 20, 24, and 35. It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTIONS 32 and 33. It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 32.

ANALYSIS

SECTION 1. Amends Section 401.003, Health and Safety Code, to redefine "board," "commission," "commissioner," and "department," and "person affected," and define "gross receipts," "major amendment" in reference to a license.

SECTION 2. Amends Sections 401.011 Health and Safety Code, to provide that the Texas Radiation Control Agency has jurisdiction over substances and activities regulated by the Texas Radiation Control Act except as provided by provisions relating to management of low-level radioactive waste and special provisions concerning by-product material. The bill provides that the TCEQ has jurisdiction over (1) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons, except oil and gas NORM, (2) the recovery or processing of source material, (3) the processing of by product material, (4) and sites for the disposal of low-level radioactive waste, by-product material, or naturally occurring radioactive material waste.

SECTION 3. Amends Section 401.054, Health and Safety Code, to authorize the TCEQ to hold a contested case hearing on a license application under the Texas Radiation Control Act only on the determination that a timely written request for a contested case hearing was filed by a person affected. The bill authorizes the TCEQ to hold a contested case hearing on an application for the renewal of or an amendment of a license issued only if the change being requested would constitute a major change to the license and a person affected requests the hearing.

SECTION 4. Amends Section 401.104, Health and Safety Code, to specify that the license must remain separate, when the TCEQ issues, amends or renews a license for a separate commercial storage and processing facility for a site also licensed for disposal. The bill removes provisions that require the Department of State Health Services (department) to provide for licensing for disposal of by-product material.

SECTION 5. Amends Section 401.108, Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to reevaluate every five years the qualifications and security provided by certain license holders.

SECTION 6. Amends Section 401.109, Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to require a holder of a license for the disposal of radioactive substances, rather than certain low-level radioactive waste, to provide a certain security.

SECTION 7. Amends Section 401.111, Health and Safety Code, to provide that TCEQ, rather than TCEQ and the Texas Board of Health, adopts rules for the issuance of licenses for new sites for processing or disposal of radioactive substances, rather than low-level radioactive waste. Requires TCEQ to consult with the advisory board and with the Texas Water Development Board in developing proposed rules.

SECTION 8. Amends Section 401.112, Health and Safety Code, to require TCEQ, rather than the department or TCEQ within its jurisdiction, to consider certain factors when making a licensing decision on licenses for the disposal of certain radioactive waste. Requires TCEQ, rather than the executive commissioner and TCEQ each within its jurisdiction, to determine by rule criteria to be used in licensing considerations.

SECTION 9. Amends Sections 401.113, Health and Safety Code, to require TCEQ, rather than the agency holding to hearing, to prepare or have prepared a written analysis of the effect on the environment of a proposed licensing activity.

SECTION 10 Amends Section 401.114, Health and Safety Code to provide that sections of the Texas Radiation Control Act relating to notice and hearings for licenses to dispose of low-level radioactive waste are the responsibility of the TCEQ.

SECTION 11. Amends Section 401.116, Health and Safety Code, to require TCEQ to 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 other statute. Deletes existing text relating to former notice and hearing requirements for a license amendment.

SECTION 12. Amends Section 401.117, Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to prohibit certain activities relating to low-level radioactive waste until certain notice and hearing requirements are met.

SECTION 13. Amends Section 401.202, Health and Safety Code, to require TCEQ, rather than the department or TCEQ within its respective jurisdiction, to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste.

SECTION 14. Amends Sections 401.241, Health and Safety Code, to require TCEQ to consider certain issues in determining the amount of security required of a holder of a license to dispose of radioactive substances, rather than a compact waste disposal facility license holder. Sets forth the amount of security required of a compact waste disposal facility license holder, rather than a license holder, under this section.

SECTION 15. Amends Section 401.262, Health and Safety Code, to provide that TCEQ, rather than the department, has the sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with certain standards and criteria.

SECTION 16. Amends Section 401.2625, Health and Safety Code, to provide that TCEQ, rather than the commissioner of state health services (commissioner), has sole and exclusive authority

to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for certain functions relating to by-product material, including storage or processing.

SECTION 17. Amends Sections 401.263, Health and Safety Code, to provide that TCEQ, rather than the department, considers the issuance, renewal, or amendment of a license relating to by-product material. Requires TCEQ to give notice of the analysis as provided by TCEQ rule, rather than the Texas Board of Health rule. Requires TCEQ, rather than the Texas Board of Health, to prohibit, by rule, major construction with respect to an activity that is to be licensed until certain requirements are met.

SECTION 18. Amends Sections 401.264 to authorize TCEQ, rather than the department, to provide an opportunity for a public hearing regarding the issuance, renewal, or amendment of a license to dispose of by-product materials.

SECTION 19. Amends Section 401.265, Health and Safety Code, to require TCEQ, rather than the department, to prescribe certain conditions for the issuance, renewal, or amendment of a radioactive substances license, rather than a radioactive material license, for an activity that results in production of by-product material. Provides that one of such conditions may be requiring the license holder to comply with standards prescribed by TCEQ, rather than by the Texas Board of Health. The bill exempts ownership of an on-site waste disposal associated with a licensed in situ leach uranium recovery facility from transfer to the state or federal government upon closure.

SECTION 20. Amends Section 401.266, Health and Safety Code, to authorize TCEQ, rather than the Texas Board of Health, by rule, to require certain land to be transferred to the federal government or to the state before termination of certain licenses. Deletes existing text relating to the department requiring this by order.

SECTION 21. Amends Section 401.267, Health and Safety Code, to authorize TCEQ, rather than the department, to acquire by-product material and certain property containing the by-product material.

SECTION 22. Amends Section 401.269, Health and Safety Code, to authorize TCEQ, rather than the department, to undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody.

SECTION 23. Amends Sections 401.270, Health and Safety Code, to authorize TCEQ, rather than the department, to require action to correct or remove a threat to the environment or to public safety caused by by-product material or its production.

SECTION 24. Amends Subchapter G, Chapter 401, Health and Safety Code, by adding Section 401.271 and 401.272 to require the holder of a license to dispose of radioactive waste to transfer each quarter an amount equal to 10 percent of the license holders gross receipts. Eight percent goes to the state general revenue fund and two percent goes to the host county. This does not apply to compact waste, federal facility waste, or industrial solid waste. The bill authorizes the TCEQ to audit a license holder's financial records and waste manifest information to ensure that the fees are accurately paid.

SECTION 25. Amends Section 401.301, Health and Safety Code, to authorize TCEQ and the department, rather than the department, to collect a fee for each license and registration that the agency issues. Authorizes TCEQ and the executive commissioner, rather than the executive commissioner, to set the fee by rule in a certain amount. Authorizes TCEQ to assess and collect additional fees from the applicant to recover certain costs.

SECTION 26. Amends Section 401.302, Health and Safety Code, to authorize the department, in coordination with TCEQ, to set and collect an annual fee from the operators of certain nuclear facilities.

SECTION 27. Amends Section 401.305, Health and Safety Code, to authorize money in the perpetual care account to be administered only for certain functions related to radioactive

substances, rather than radioactive material. Authorizes the department or TCEQ, rather than the department, to use the money in the perpetual care account to pay for certain other measures.

SECTION 28. Amends Section 401.343, Health and Safety Code, to authorize the department or TCEQ, rather than the department, to seek reimbursement to pay for certain functions relating to radioactive substances, rather than radioactive material. Makes conforming and nonsubstantive changes.

SECTION 29. Amends the heading to Subchapter K, Chapter 401, Health and Safety Code, to make a conforming change.

SECTION 30. Amends Sections 401.412, Health and Safety Code, to remove the clarification of the term "radioactive substance" for this subsection. Provides that TCEQ, rather than the commissioner of state health services, 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 the disposal of by-product material.

SECTION 31. Amends Section 401.413, Health and Safety Code, to delete existing text providing that this section does not apply to a person required to obtain a license for the recovery or processing of source material or for recovery, processing, or disposal of by-product material.

SECTION 32. Amends Section 401.414, Health and Safety Code, to require TCEQ, the Health and Human Services Commission (HHSC), the Railroad Commission of Texas, by rule, to adopt memoranda of understanding defining their respective duties under this chapter.

SECTION 33. Amends Sections 401.415, Health and Safety Code, to provide that the railroad commission has sole authority to regulate and issue licenses, permits, and orders for the processing, storage, and disposal, rather than just disposal, of oil and gas naturally occurring radioactive material (NORM) waste and the decontamination and maintenance of equipment. Specifies that the rules the railroad commission is required to issue regarding the management of oil and gas NORM waste includes rules governing processing, storage, and disposal of the waste and the decontamination and maintenance of equipment. Requires the rules to provide protection for public health, safety, and the environment equivalent to the protection provided by rules of TCEQ applicable to processing, storage, and disposal, rather than just disposal, of other NORM wastes. Deletes the reference to different methods and sites for disposing of oil and gas NORM wastes. Requires the Railroad Commission to consider factors necessary to provide for the equitable allocation among NORM operators of the costs of administering the oil and gas NORM program. Prohibits the total amount of fees collected from exceeding the estimated costs of administering the oil and gas NORM program.

SECTION 34. Amends Section 361.015, Health and Safety Code, to provide that TCEQ is the state agency that licenses the storage and processing activities of radioactive waste, as well as the disposal activities, not preemptively regulated by the federal government. Provides that, except as provided by Subsection (a), HHSC, acting through the department, rather than the Texas Department of State Health Services, is the state agency that regulates radioactive waste activities not preemptively regulated by the federal government. Deletes the exclusion for disposal activities. Provides that the railroad commission is the state agency that licenses and regulates the possession, storage, processing, handling, and disposal of oil and gas NORM waste and decontamination and maintenance of related equipment.

SECTION 35. Amends Subchapter B, Chapter 27, Water Code, by adding Section 27.022, to authorize TCEQ, as a component of an injection well permit, to issue an authorization for an in situ mining of radioactive substances in a specified production area. Prohibits the authorization from containing a provision that requires any additional approval of TCEQ or any additional hearing for the permit holder to conduct minor in situ mining in the production area. Provides that on or after the effective date of the Act, a rule or order of TCEQ that requires additional approval of TCEQ of an additional hearing for the permit holder to conduct minor in situ mining in the production area specified in an injection well permit shall no longer be required. Provides that this section does not affect the authority of TCEQ to exercise certain powers. Provides that the change in law made by this section does not affect any matter that is the subject of litigation on or before September 1, 2005.

SECTION 36. Transfers certain rights, powers, duties, obligations, functions, activities, property, programs, and appropriations relating to radioactive substances to TCEQ on the earlier of the 31st day after the effective date of this Act or September 1, 2005. Sets forth provisions relating to this transfer.

SECTION 37. Defines "license." Provides that on the effective date of this Act, a condition of a license that would subject the license holder to a civil or administrative penalty for the license holder's failure to transfer by-product material to certain disposal sites by a certain date is void.

SECTION 38. Provides that this Act does not impair, delay, or affect the priority established by law for processing and review of the application for a license to dispose of low-level radioactive waste that was filed with TCEQ before January 1, 2005. Requires TCEQ to give priority to the processing and review of a license application described to dispose of low-level radioactive waste over all other applications that pertain to radioactive substances or radioactive waste pending before TCEQ except for those applications the executive director of TCEQ determines are necessarily of a higher priority to avert or address an emergency concerning the public health or safety. Requires TCEQ, subject to the priority given under these provisions, to give priority to the review and processing of certain applications.

SECTION 39. Requires the applicant for a license to assist TCEQ in meeting any deadlines imposed by the provisions of Texas Radiation Control Act by submitting to the TCEQ any required information regarding the application.

SECTION 40. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

If the Act does not receive the vote necessary for immediate effect, then the Act takes effect on September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the definition of "gross receipts." The substitute adds a definition of "major amendment" in reference to a license. The substitute amends provisions relating to the contested case hearings under the Texas Radiation Control Act. The substitute authorizes the TCEQ to hold a contested case hearing on an application for the renewal of or an amendment of a license issued only if the change being requested would constitute a major change to the license and a person affected requests the hearing.

The substitute removes provisions that authorize the TCEQ to exempt, by rule, a source of radiation or kind of use or user from licensing or registration requirements provided by the Texas Radiation Control Act under their jurisdiction. The substitute authorizes a separate commercial and processing license to be renewed for a site also licensed for disposal under the Texas Radiation Control Act.

The substitute removes provisions that require TCEQ to provide for licensing for disposal of radioactive substances, rather than radioactive material except for the disposal of by-product material. The substitute removes provisions that delete the requirement for the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission, by rule, to provide for licensing of by-product material. The substitute specifies that the license must remain separate, when the TCEQ issues, amends or renews a license for a separate commercial storage and processing facility for a site also license for disposal.

The substitute removes provisions in the original relating to limitations on radioactive substance storage. The substitute provides that the state fee on radioactive substances does not apply to industrial solid waste. The substitute removes the board of health from the memorandum of understanding defining the various agencies' roles under the Texas Radiation Control Act.

The substitute provides that if the Act takes effect immediately, the TCEQ is required to complete any technical review of a license application and issue a draft permit no later than January 1, 2006, rather than March 1, 2006. The substitute provides that if the Act takes effect on September 1, 2005, the TCEQ is required to complete any technical review of a license application and issue a draft permit no later than March 1, 2006 rather than June 1, 2006. The substitute provides that notice of hearing shall be provided only to the applicant, the office of public interest counsel, the executive director of the TCEQ, and the person who requested the contested case hearing notwithstanding any provision of Texas Radiation Control Act.

The substitute provides that if the Act takes effect immediately, the TCEQ is required to render a final decision on a license application no later than January 1, 2007 rather than March 1, 2007. The substitute provides that if the Act takes effect on September 1, 2005, the commission shall render a final decision on a license application no later than March 1, 2007, rather than June 1, 2007.

The substitute provides that provisions that void a condition of a license that would subject the license holder to a civil or administrative penalty for the license holder's failure to transfer by-product material to certain disposal sites by a certain date do not impair the authority of TCEQ to impose a license condition under Section 401.120, Health and Safety Code, as added by this Act.