

By: Duncan

S.B. No. 1667

Substitute the following for S.B. No. 1667:

By: Bonnen

C.S.S.B. No. 1667

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 Subdivisions (12-a) and (13-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, unloading, repackaging,  
5 characterization, treatment, storage, or processing, and federal  
6 or state taxes or fees on waste received. The commission may  
7 promulgate rules in establishing the criteria for determining gross  
8 receipts consistent with the parameters of this definition.

9 (13-a) "Major amendment," in reference to a license:

10 (A) does not include a minor amendment or  
11 modification to a license that would not substantially:

12 (i) alter the facility or operations  
13 authorized by the license; or

14 (ii) reduce the capacity of the facility  
15 authorized by the license to protect public health or the  
16 environment; and

17 (B) means an amendment to a license that would  
18 transfer the license to the custodial agency or would authorize:

19 (i) a significant change in the type of or  
20 in limitations on the concentration of wastes authorized to be  
21 received under the license;

22 (ii) the receipt of wastes not authorized  
23 by the license;

24 (iii) a change in the operator of the  
25 facility authorized by the license;

26 (iv) the closure of, and would provide the  
27 final closure plan for, the facility authorized by the license; or

1                    (v) a change that would have a significant  
2 effect on the human environment for which the commission has  
3 determined that an environmental analysis would be required or has  
4 prepared a written environmental analysis.

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

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

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

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

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

19            (b) The commission has jurisdiction to regulate and  
20 license:

21                    (1) the disposal of radioactive substances;

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

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

27                    (4) the processing of by-product material as defined

1 by Section 401.003(3)(B); and

2 (5) sites for the disposal of:

3 (A) low-level radioactive waste;

4 (B) by-product material; or

5 (C) naturally occurring radioactive material  
6 waste ~~[except by-product material defined by Section~~  
7 ~~401.003(3)(B)]~~.

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

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

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

18 (2) the determination by the department or commission  
19 of compliance with or the grant of exemptions from a department or  
20 commission rule or order; or

21 (3) the grant or amendment by the department or  
22 commission of a specific license.

23 (b) Notwithstanding any provision of this chapter or of the  
24 Water Code, the commission may hold a contested case hearing on a  
25 license application under this chapter only on the commission's  
26 determination that a timely written request for a contested case  
27 hearing was filed by a person affected. The determination of who is

1 a person affected and the authority of the commission to grant a  
2 hearing on an application for a license under this chapter are  
3 governed exclusively by this chapter [~~This section does not apply~~  
4 ~~to license or registration activities for which other notice and~~  
5 ~~hearing procedures are required by this chapter~~].

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

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

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

20 (f) The commission may issue, amend, or renew a license for  
21 a separate commercial storage and processing facility for a site  
22 also licensed for disposal under this chapter, but the licenses  
23 must remain separate.

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

26 (c) The [~~department or~~] commission shall reevaluate every  
27 five years the qualifications and security provided by a license

holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

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

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

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

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

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

(1) flood hazard areas;

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

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

(b) The ~~[board and]~~ commission ~~[each]~~ shall consult with the advisory board and with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic

1 Geology, and other appropriate state agencies in developing  
2 proposed rules. The ~~[board and]~~ commission ~~[each]~~ by rule shall:

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

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

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

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

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

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

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

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

26 (5) the applicant's qualifications, including  
27 financial and technical qualifications and compliance history

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

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

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

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

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

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

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

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

20 (13) decommissioning and postclosure care plans;

21 (14) security plans;

22 (15) worker monitoring and protection plans;

23 (16) emergency plans; and

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



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

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

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

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

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

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

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

1 and Chapter 2001, Government Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) the state; or

27 (B) the federal government if the state declines

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) eight percent shall be transferred to the state  
16 general revenue fund; and

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

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

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

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

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

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

(1) process applications for licenses or registrations;

(2) amend or renew licenses or registrations;

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

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

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

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

(e) The commission and department shall suspend assessment

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

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

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

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

16 SECTION 27. Subsections (c), (e), (f), and (g), Section  
17 401.305, Health and Safety Code, are amended to read as follows:

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

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

27 (1) to prevent or mitigate the adverse effects of

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

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

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

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

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

27 Sec. 401.343. RECOVERY OF SECURITY. (a) The department or

commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the ~~[department's]~~ request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances ~~[material]~~ resulting from a violation of this chapter relating to an activity under the ~~[department's]~~ jurisdiction of the department or commission or a violation of a rule, license, registration, or order adopted or issued by the department or commission under this chapter.

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

SECTION 29. The heading to Subchapter K, Chapter 401, 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 30. 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).]~~

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

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

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

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

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

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

27 (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~~]

1 regarding protection of the public health and the environment. The  
2 rules of the railroad commission shall provide protection for  
3 public health, safety, and the environment equivalent to the  
4 protection provided by rules of the commission applicable to  
5 processing, storage, and disposal of other NORM wastes having  
6 similar properties, quantities, and distribution[, ~~although the~~  
7 ~~approved methods and sites for disposing of oil and gas NORM wastes~~  
8 ~~may be different from those approved for other NORM wastes~~].

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

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

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

23 (b) Except as provided by Subsection (a), the Health and  
24 Human Services Commission, acting through the Department of State  
25 Health Services or other department as designated by the executive  
26 commissioner of the Health and Human Services Commission, [The  
27 ~~Texas Department of Health]~~ is the state agency under Chapter 401

1 that regulates radioactive waste activities[, ~~excluding disposal,~~  
2 not preemptively regulated by the federal government.

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

7 SECTION 35. Subchapter B, Chapter 27, Water Code, is  
8 amended by adding Section 27.022 to read as follows:

9 Sec. 27.022. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF  
10 RADIOACTIVE SUBSTANCES. (a) As a component of an injection well  
11 permit, the commission may issue an authorization for in situ  
12 mining of radioactive substances in a specified production area.  
13 The authorization may not contain a provision that requires any  
14 additional approval of the commission or any additional hearing for  
15 the permit holder to conduct minor in situ mining in the production  
16 area. The commission shall by rule define the difference between  
17 major and minor in situ mining. Notwithstanding any other  
18 provision in this chapter, authorization to mine or resume mining  
19 in a production area under an existing injection well permit that  
20 does not amend a previously approved restoration table, shall not  
21 be considered a major amendment.

22 (b) A rule or provision of a permit or order of the  
23 commission that requires additional approval of the commission or  
24 an additional hearing for the permit holder to conduct minor in situ  
25 mining in the production area specified in an injection well permit  
26 shall no longer be required after the effective date of the Act  
27 enacting this section. Notwithstanding any provision of this code

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

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

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

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

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

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

17 SECTION 36. (a) On the earlier of the 31st day after the  
18 effective date of this Act or September 1, 2005, the following  
19 rights, powers, duties, obligations, functions, activities,  
20 property, programs, and appropriations are transferred to the Texas  
21 Commission on Environmental Quality:

22 (1) all rights, powers, duties, obligations,  
23 functions, and activities:

24 (A) that Chapter 401, Health and Safety Code,  
25 assigns to the Texas Department of Health, the Texas Board of  
26 Health, or their successor agencies or to the governing body,  
27 officers, or employees of that department, that board, or their

1 successor agencies, including the Health and Human Services  
2 Commission and the Department of State Health Services; and

3 (B) that are related to licensing and regulation  
4 of:

5 (i) radioactive substances recovery,  
6 storage, processing, and disposal; or

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

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

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

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

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

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

27 (B) long-term care of decommissioned sites for

1 disposal of by-product material; and

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

7 (b) Appropriations transferred under Subdivision (4),  
8 Subsection (a) of this section, are transferred for the remainder  
9 of that state fiscal biennium.

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

23 (d) The transfer of rights, powers, duties, obligations,  
24 functions, activities, property, and programs of the Health and  
25 Human Services Commission or the Department of State Health  
26 Services to the Texas Commission on Environmental Quality made by  
27 this Act does not affect or impair any act done or obligation,

1 right, license, permit, requirement, or penalty accrued or existing  
 2 under the former law; that law remains in effect for the purposes of  
 3 any action concerning such an act done or obligation, right,  
 4 license, permit, requirement, or penalty. The Texas Commission on  
 5 Environmental Quality shall continue a proceeding of the Health and  
 6 Human Services Commission or the Department of State Health  
 7 Services that is related to a responsibility, duty, activity,  
 8 function, or program transferred by this Act, including processing  
 9 an application for a license or other authorization and including  
 10 enforcing the requirements of Chapter 401, Health and Safety Code,  
 11 or a rule adopted under that chapter. A rule of the Health and Human  
 12 Services Commission or the Department of State Health Services  
 13 related to a responsibility, duty, activity, function, or program  
 14 transferred by this Act is enforceable as a rule of the Texas  
 15 Commission on Environmental Quality until that commission adopts  
 16 other rules.

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

25 (f) The Texas Commission on Environmental Quality shall  
 26 provide an opportunity for employees of the Health and Human  
 27 Services Commission or the Department of State Health Services who

1 have performed duties related to a right, power, duty, obligation,  
2 responsibility, function, activity, or program transferred by this  
3 Act to request a transfer to commission employment. In making  
4 employment decisions under this subsection, the Texas Commission on  
5 Environmental Quality shall:

6 (1) ensure that state and federal requirements are met  
7 by commission employees; and

8 (2) consider the value of maintaining continuity in  
9 the personnel staffing relevant programs.

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

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

20 (i) The Texas Commission on Environmental Quality shall  
21 continue any applications review or processing and any hearings  
22 that concern a matter subject to transfer under Subsection (a) of  
23 this section that, on the date of the transfer, is being conducted  
24 by the Health and Human Services Commission or the Department of  
25 State Health Services or their successor agencies. The agencies  
26 shall cooperate and consult with each other to ensure that any delay  
27 necessitated by the transfer is minimized to the greatest extent



1 possible. The Texas Commission on Environmental Quality shall  
2 utilize progress made on any technical review or environmental  
3 analysis conducted by the department prior to the effective date of  
4 this Act.

5 (j) An application for the renewal or amendment of a license  
6 to recover or process source material and to dispose of the  
7 associated by-product material that is pending with the Department  
8 of State Health Services, and was received prior to January 1,  
9 2005, on the earlier of the 31st day after the effective date of  
10 this Act or September 30, 2005, is considered, based on federal  
11 requirements, approved by the department on the earlier of the 90th  
12 day after the effective date of this Act or October 31, 2005, unless  
13 the department or the Texas Commission on Environmental Quality  
14 before that date determines that the application should not be  
15 approved because of a health or safety emergency or because the  
16 applicant substantially fails to meet application requirements.

17 (k) On or before the earlier of the 31st day after the  
18 effective date of this Act or September 30, 2005, the Department of  
19 State Health Services shall:

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

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

26 (3) report to the federal Nuclear Regulatory  
27 Commission the department's approval of the plan and the results of

1 the inspection under Subdivisions (1) and (2) of this subsection.

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

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

26 (n) An application for a new license to dispose of  
27 by-product material that is filed with the Department of State

1 Health Services on or before January 1, 2005, and that has not been  
2 referred to the State Office of Administrative Hearings by the  
3 department before the effective date of this Act shall be processed  
4 by the Texas Commission on Environmental Quality following the  
5 effective date of this Act as follows:

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

9 (2) if this Act takes effect immediately, the  
10 commission shall complete any technical review of a license  
11 application subject to this subsection and issue a draft permit no  
12 later than January 1, 2006. If this Act takes effect on September  
13 1, 2005, the commission shall complete any technical review of a  
14 license application subject to this subsection and issue a draft  
15 permit no later than March 1, 2006. The commission shall utilize  
16 progress made on any technical review or environmental analysis  
17 conducted by the department prior to the effective date of this Act.  
18 In order to meet the applicable deadline above, the commission may  
19 contract with the department or other entities for completion of  
20 any portion of the technical review that has not been completed upon  
21 the effective date of this Act. The commission may assess and  
22 collect additional fees from the applicant to recover the costs the  
23 commission incurs for technical review of a license application  
24 subject to this subsection;

25 (3) if this Act takes effect immediately, the  
26 commission shall render a final decision on a license application  
27 subject to this subsection no later than January 1, 2007. If this

1 Act takes effect on September 1, 2005, the commission shall render a  
2 final decision on a license application subject to this subsection  
3 no later than March 1, 2007; and

4 (4) a contested case hearing held on a license  
5 application subject to this subsection that was filed with the  
6 department on or before January 1, 2005, shall not exceed one year  
7 in duration, measured from the date of referral by the commission of  
8 the application to the State Office of Administrative Hearings  
9 until the commission makes a final decision on the application.  
10 Discovery in such a hearing shall be limited to not more than 60  
11 days in order to meet this limitation. Notwithstanding any  
12 provision of Chapter 401, Health and Safety Code, notice of hearing  
13 shall be provided only to the applicant, the office of public  
14 interest counsel, the executive director of the commission, and the  
15 person who timely requested a contested case hearing by mail at  
16 least 10 days in advance of the hearing.

17 SECTION 37. (a) In this section, "license" means a license  
18 that authorizes the license holder to receive, process, store, and  
19 transfer by-product material, as defined by Paragraph (B),  
20 Subdivision (3), Section 401.003, Health and Safety Code.

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

26 SECTION 38. (a) This Act does not impair, delay, or affect  
27 the priority established by law for processing and review of the

1 application for a license to dispose of low-level radioactive waste  
2 that was filed with the Texas Commission on Environmental Quality  
3 before January 1, 2005.

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

12 (c) Subject to the priority given under Subsection (b) of  
13 this section to the application, the Texas Commission on  
14 Environmental Quality shall give priority to the review and  
15 processing of:

16 (1) an application for the commercial disposal of  
17 by-product material;

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

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

24 SECTION 39. Notwithstanding other law or any rule on the  
25 subject of timeliness of an applicant providing information  
26 pertaining to an application for a license from the Texas  
27 Commission on Environmental Quality, the applicant for a license

1 shall assist the commission in meeting any deadlines imposed by  
2 Chapter 401, Health and Safety Code, by submitting to the  
3 commission any information the commission requires regarding the  
4 application in a prompt and timely manner.

5       SECTION 40. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2005.