

By: Duncan

S.B. No. 1667

A BILL TO BE ENTITLED

AN ACT

relating to transferring certain responsibilities of the Department of State Health Services concerning radioactive materials to the Texas Commission on Environmental Quality; imposing fees and surcharges.

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

SECTION 1. Sections 401.003(2), (4), (5), and (6), Health and Safety Code, are amended 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.

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

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

(b) The commission has jurisdiction to regulate and

license:

(1) the disposal of radioactive substances;

(2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons;

(3) the recovery or processing of source material;

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

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

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

SECTION 3. Section 401.104(b), Health and Safety Code, is amended to read as follows:

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

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

(a) The board or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the

1 agency's jurisdiction if the board or commission finds that the  
2 exemption of that source of radiation or kind of use or user will  
3 not constitute a significant risk to the public health and safety  
4 and the environment.

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

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

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

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

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

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

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

27 (1) flood hazard areas;

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

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

5           (b) The ~~[board and]~~ commission ~~[each]~~ shall consult with the  
6 State Soil and Water Conservation Board, the Bureau of Economic  
7 Geology, and other appropriate state agencies in developing  
8 proposed rules. The ~~[board and]~~ commission ~~[each]~~ by rule shall:

9           (1) require selection of sites in areas in which  
10 natural conditions minimize potential contamination of surface  
11 water and groundwater; and

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

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

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

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

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

26           (3) socioeconomic effects on surrounding communities  
27 of operation of the licensed activity and of associated

1 transportation of low-level radioactive waste;

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

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

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

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

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

17 (9) adequate insurance of the applicant to cover  
18 potential injury to any property or person, including potential  
19 injury from risks relating to transportation;

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

21 (11) a monitoring, record-keeping, and reporting  
22 program;

23 (12) spill detection and cleanup plans for the  
24 licensed site and related to associated transportation of low-level  
25 radioactive waste;

26 (13) decommissioning and postclosure care plans;

27 (14) security plans;

1 (15) worker monitoring and protection plans;

2 (16) emergency plans; and

3 (17) a monitoring program for applicants that includes  
4 prelicense and postlicense monitoring of background radioactive  
5 and chemical characteristics of the soils, groundwater, and  
6 vegetation.

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

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

16 SECTION 9. Sections 401.113(a) and (b), Health and Safety  
17 Code, are amended to read as follows:

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

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

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

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

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

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

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

24          Sec. 401.116. LICENSE AMENDMENT.   The commission shall  
25   adopt rules to establish requirements for public notice of and  
26   public participation in the amendment of a license issued under  
27   this subchapter, including both minor and major amendments. ~~[(a)]~~

1 ~~An amendment to a license to process or dispose of low-level~~  
2 ~~radioactive waste from other persons may take effect immediately.~~

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

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

10 ~~[(1) the identity of the license holder;~~

11 ~~[(2) identification of the license; and~~

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

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

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

21 Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~  
22 commission shall prohibit major construction relating to  
23 activities to be permitted under a license issued by the commission  
24 ~~[agency]~~ to process or dispose of low-level radioactive waste from  
25 other persons until the requirements in Sections 401.113 and  
26 401.114 are completed.

27 SECTION 13. Section 401.202(a), Health and Safety Code, is



amended to read as follows:

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

SECTION 14. Section 401.262, Health and Safety Code, is amended to read as follows:

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission [~~department~~] has 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:

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

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

SECTION 15. Section 401.2625, Health and Safety Code, is amended to read as follows:

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

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

(a) If the commission [~~department~~] is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of

1 by-product material and the commission [~~department~~] determines  
2 that the licensed activity will have a significant impact on the  
3 human environment, the commission [~~department~~] shall prepare or  
4 have prepared a written environmental analysis.

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

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

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

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

18 SECTION 17. Sections 401.264(a), (c), and (d), Health and  
19 Safety Code, are amended to read as follows:

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

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

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

10          SECTION 18. Section 401.265, Health and Safety Code, is  
11 amended to read as follows:

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

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

25           (2) the ownership of a disposal site, other than a  
26 disposal well covered by a permit issued under Chapter 27, Water  
27 Code, and the by-product material resulting from the licensed

activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

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

SECTION 19. Section 401.266(a), Health and Safety Code, is amended to read as follows:

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

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

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

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

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission [~~department~~] may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be

1 managed in a manner consistent with protecting public health,  
2 safety, and the environment.

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

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

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

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

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

25 (a) If the commission [~~department~~] finds that by-product  
26 material or the operation by which that by-product material is  
27 derived threatens the public health and safety or the environment,

1 the commission [~~department~~] by order may require any action,  
2 including a corrective measure, that is necessary to correct or  
3 remove the threat.

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

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

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

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

1 held in accordance with the rules of the commission ~~[board]~~. As a  
2 result of this hearing, the commission ~~[department]~~ shall decide  
3 whether to affirm, modify, or set aside the emergency order. All  
4 provisions of the emergency order shall remain in force and effect  
5 during the pendency of the hearing, unless otherwise altered by the  
6 commission ~~[department]~~.

7 SECTION 23. The heading to Subchapter K, Chapter 401,  
8 Health and Safety Code, is amended to read as follows:

9 SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS

10 ~~[NATURAL RESOURCE CONSERVATION]~~ COMMISSION

11 ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS

12 SECTION 24. Sections 401.412(a) and (b), Health and Safety  
13 Code, are amended to read as follows:

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

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

26 SECTION 25. Section 401.413, Health and Safety Code, is  
27 amended to read as follows:

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

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

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

17           SECTION 27. Sections 401.415(d) and (e), Health and Safety  
18 Code, are amended to read as follows:

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

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



gas NORM waste and in so doing shall consult with the commission ~~[Texas Natural Resource Conservation Commission]~~ and the department ~~[Department of Health]~~ regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

SECTION 28. Chapter 401, Health and Safety Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. FEES AND SURCHARGES

Sec. 401.451. STATE FEE ON RADIOACTIVE SUBSTANCES DELIVERED FOR STORAGE, PROCESSING, OR DISPOSAL. (a) A holder of a license issued by the commission under this chapter that authorizes the storage, processing, or disposal of a radioactive substance shall transfer to the state general revenue fund each quarter an amount equal to 10 percent of the license holder's gross receipts received from operations under the license.

(b) Subsection (a) does not apply to the gross receipts of the compact waste disposal facility license holder that are subject to Section 401.2445.

Sec. 401.452. SURCHARGE ON RADIOACTIVE SUBSTANCES DELIVERED FOR STORAGE, PROCESSING, OR DISPOSAL. (a) A holder of a license issued by the commission under this chapter that authorizes the storage, processing, or disposal of a radioactive substance, on

the delivery of the radioactive substance to the license holder, shall collect a surcharge as provided by this section from the person who delivers the radioactive substance to the license holder. The license holder shall transfer to the state general revenue fund an amount equal to the surcharges collected during each calendar quarter under this section as provided by commission rule.

(b) The commission by rule shall establish and shall periodically revise a schedule of surcharges imposed by Subsection (a) with multipliers to impose surcharges in varying amounts based on the types of the radioactive substances, the hazard presented by the radioactive substances and any materials, chemicals, biological hazards, or items with which the radioactive substances are mixed or shipped, and the size of the shipment. The surcharge does not apply to the delivery of compact waste under Subchapter F.

(c) In considering the hazard presented by radioactive substances and any materials, chemicals, biological hazards, or items with which radioactive substances may be mixed or shipped, the commission shall consider:

(1) the radiation dose rate of the radioactive substances, measured in roentgens per hour;

(2) the curie content of the radioactive substances, measured in picocuries per volume of the substances shipped or measured by millicuries per shipment;

(3) the radioactive half-life of the radioactive substances;

(4) additional hazards that may be presented by the

1 shipment, including whether the radioactive substances or an  
2 associated material, chemical, biological hazard, or item requires  
3 special precautions in handling, processing, storage, or disposal;  
4 and

5 (5) the radioactive, physical, and chemical  
6 properties of each type of radioactive substance.

7 (d) Rules adopted under this section may include provisions  
8 establishing:

9 (1) classification of customers and services; and

10 (2) applicability of fees.

11 (e) The commission shall consult with the advisory board and  
12 the Legislative Budget Board and consider the recommendations of  
13 those boards before adopting or amending the surcharge rate  
14 schedule required by Subsection (b).

15 (f) A rule or order adopted by the commission under this  
16 section may not conflict with a ruling of a federal regulatory body.

17 Sec. 401.453. AUDIT AUTHORITY. The commission may audit a  
18 license holder's financial records to ensure that the fees and  
19 surcharges imposed under this subchapter are accurately paid. The  
20 license holder shall comply with the commission's audit-related  
21 requests for information.

22 SECTION 29. Section 361.015, Health and Safety Code, is  
23 amended to read as follows:

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

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

8           SECTION 30. (a) On the earlier of the 31st day after the  
9 effective date of this Act or September 1, 2005, the following  
10 rights, powers, duties, obligations, functions, activities,  
11 property, programs, and appropriations are transferred to the Texas  
12 Commission on Environmental Quality:

13                 (1) all rights, powers, duties, obligations,  
14 functions, and activities:

15                         (A) that Chapter 401, Health and Safety Code,  
16 assigns to the Texas Department of Health, the Texas Board of  
17 Health, or their successor agencies or to the governing body,  
18 officers, or employees of that department, that board, or their  
19 successor agencies, including the Health and Human Services  
20 Commission and the Department of State Health Services; and

21                         (B) that are related to licensing and regulation  
22 of:

23                                 (i) radioactive substances recovery,  
24 storage, processing, and disposal; or

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

27                 (2) all equipment, information, documents,

1 facilities, and other property of the Health and Human Services  
2 Commission or the Department of State Health Services pertaining to  
3 licensing and regulation of:

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

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

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

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

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

20 (4) the unexpended and unobligated portions of the  
21 appropriations for the state fiscal biennium beginning September 1,  
22 2003, made to the Health and Human Services Commission or the  
23 Department of State Health Services for activities described by  
24 Subdivision (3) of this subsection.

25 (b) Appropriations transferred under Subsection (a)(4) of  
26 this section are transferred for the remainder of that state fiscal  
27 biennium.

1           (c) The Texas Commission on Environmental Quality may not  
2 charge a fee for an application that is pending before the Health  
3 and Human Services Commission or the Department of State Health  
4 Services on the date the transfer directed by Subsection (a) of this  
5 section occurs.

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

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

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

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

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

1           (1) ensure that federal requirements for engineering  
2 expertise are met by commission employees; and

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

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

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

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

24           SECTION 31. (a) For an amendment of an existing license  
25 that authorizes storage or processing of radioactive substances  
26 from other persons the application for which is pending on the  
27 effective date of this Act:



1           (1) the Texas Commission on Environmental Quality or  
2 the executive director of the commission may provide for the  
3 amendment, if granted, to take effect immediately;

4           (2) the Texas Commission on Environmental Quality  
5 shall publish notice of the application once in the Texas Register  
6 and once in a newspaper of general circulation in the county in  
7 which the activity to be licensed would be located; and

8           (3) the Texas Commission on Environmental Quality  
9 shall hold a hearing to consider the amendment if a person affected  
10 files a written complaint with the commission not later than the  
11 30th day after the date on which the notice described by Subdivision  
12 (2) of this section is published.

13          (b) The Texas Commission on Environmental Quality shall  
14 give notice to any person who has notified the commission in advance  
15 that the person desires to receive notice of the proposed  
16 amendment.

17          (c) Notice published under Subsection (a)(2) of this  
18 section and notice under Subsection (b) of this section must  
19 include the identity of the license holder, the identification of  
20 the license, and a short and plain statement of the substance of the  
21 proposed amendment.

22          (d) If a hearing is held under Subsection (a)(3) of this  
23 section, the Texas Commission on Environmental Quality shall give  
24 notice of the hearing as provided by Section 401.114, Health and  
25 Safety Code, as amended by this Act.

26          (e) For purposes of Subsection (a)(3) of this section,  
27 "person affected" has the meaning assigned by Section 401.003(15),

1 Health and Safety Code.

2       SECTION 32. This Act takes effect immediately if it  
3 receives a vote of two-thirds of all the members elected to each  
4 house, as provided by Section 39, Article III, Texas Constitution.  
5 If this Act does not receive the vote necessary for immediate  
6 effect, this Act takes effect September 1, 2005.