

BILL ANALYSIS

Senate Research Center

S.B. 1604
By: Duncan
Natural Resources
8/21/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Department of State Health Services (DSHS) regulates the recovery of uranium and disposal of byproduct material as well as the commercial storage and processing of radioactive waste. The Texas Commission on Environmental Quality (TCEQ) regulates the disposal of radioactive substances except for byproduct material and oil and gas naturally occurring radioactive material (NORM) waste.

S.B. 1604 consolidates storage, processing, and disposal activities related to uranium mining and radioactive waste under TCEQ.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 3 (Section 401.104, Health and Safety Code) and SECTION 7 (Section 401.111, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Health is rescinded in SECTION 3 (Section 401.104) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4 (Section 401.106, Health and Safety Code) SECTION 15 (Section 401.263, Health and Safety Code), SECTION 18 (Section 401.266, Health and Safety Code), SECTION 23 (Section 401.301, Health and Safety Code), and SECTION 32 (Section 27.0513, Water Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Health is rescinded in SECTION 5 (Sections 401.108, Health and Safety Code), SECTION 7 (Section 401.111, Health and Safety Code), SECTION 15 (Section 401.263, Health and Safety Code), and SECTION 18 (Section 401.266, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 30 (Section 401.414, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 30 (Section 401.414, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

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

- (2) Redefines "board."
- (4) Redefines "commission."
- (5) Redefines "commissioner."
- (6) Redefines "department."
- (12-a) Defines "gross receipts."

SECTION 2. Amends Sections 401.011(a) and (b), Health and Safety Code, as follows:

(a) Provides that the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission (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) Provides that the Texas Commission on Environmental Quality (TCEQ) has jurisdiction to regulate and license certain practices regarding radioactive substances.

SECTION 3. Amends Section 401.104, Health and Safety Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Requires TCEQ by rule to provide for licensing for the disposal of radioactive substances, rather than radioactive material except for the disposal of by-product material defined by Section 401.003(3)(B). Deletes existing text requiring the department by rule to provide for licensing the disposal of by-product material defined by Section 401.003(3)(B).

(f) Authorizes a separate commercial storage and processing license to be issued for a site also licensed for disposal under this chapter.

SECTION 4. Amends Section 401.106(a), Health and Safety Code, as follows:

(a) Authorizes the board (executive commissioner of the Health and Human Services Commission) or TCEQ by rule to 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 agency's jurisdiction if the board or TCEQ finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

SECTION 5. Amends Section 401.108, Health and Safety Code, as follows:

Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Requires an applicant, before a license is issued or renewed by TCEQ, to demonstrate to TCEQ that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to TCEQ. Deletes existing text requiring the board by rule to require an applicant to demonstrate to the department that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, before the department issues or renews a license.

(b) Requires a license holder to submit to the department or TCEQ, as appropriate, at intervals required by board or TCEQ rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a), rather than proof of the license holder's financial qualifications.

(c) Requires TCEQ at regular intervals not to exceed five years to reevaluate the qualifications and security provided by a license holder under Subchapter F or Subchapter G. Deletes existing text requiring the department to reevaluate every five years the qualifications and security provided by a license holder under Subchapter F or Subchapter G.

SECTION 6. Amends Section 401.109(b), Health and Safety Code, as follows:

(b) Requires TCEQ to require a holder of a license that authorizes the disposal of radioactive substances, rather than low-level radioactive waste as provided by Subchapter F, to provide security acceptable to TCEQ, rather than the Texas Radiation Control Agency (agency), to assure performance of the license holder's obligations under this chapter. Deletes existing text requiring the department to require a holder of a license that

authorizes the disposal of low-level radioactive waste as provided by Subchapter F to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter.

SECTION 7. Amends Section 401.111, Health and Safety Code, as follows:

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES. (a) Requires TCEQ in adopting rules for the issuance of licenses under its jurisdiction for new sites for processing or disposal of radioactive substances from other persons, to adopt criteria for the designation of certain unsuitable sites. Deletes existing text requiring the board and TCEQ each, in adopting rules for the issuance of licenses under their respective jurisdictions for new sites for processing or disposal of low-level radioactive waste from other persons, to adopt criteria for the designation of certain unsuitable sites.

(b) Requires TCEQ to consult with the Texas Water Development Board (TWDB), the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. Requires TCEQ by rule to require and prohibit certain actions. Makes conforming changes.

SECTION 8. Amends Section 401.112, Health and Safety Code, as follows:

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) Requires TCEQ, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, to consider site suitability, geological, hydrological, and meteorological factors, and natural hazards, rather than natural hazards, and the demonstration of financial qualifications under Section 401.108, rather than the requirements of Section 401.110(b) for an application to the department. Makes a conforming change.

(b) Requires an applicant for the specific license to submit with the application information necessary for TCEQ, rather than the issuing agency, to consider the factors under Subsection (a).

(c) Makes conforming changes.

SECTION 9. Amends Sections 401.113(a) and (b), Health and Safety Code, as follows:

(a) Requires TCEQ, rather than the agency holding the hearing, to prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that TCEQ, rather than the agency, determines has a significant effect on the human environment before a hearing under Section 401.114 begins.

(b) Makes a conforming change.

SECTION 10. Amends Section 401.114, Health and Safety Code, as follows:

Sec. 401.114. NOTICE AND HEARING. Makes conforming changes.

SECTION 11. Amends Section 401.117, Health and Safety Code, to make conforming changes.

SECTION 12. Amends Section 401.202(a), Health and Safety Code, to make a conforming change.

SECTION 13. Amends Section 401.262, Health and Safety Code, as follows:

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. Provides that TCEQ, rather than the 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 certain federal standards.

SECTION 14. Amends Section 401.2625, Health and Safety Code, as follows:

Sec. 401.2625. LICENSING AUTHORITY. Provides that TCEQ, rather than the commissioner of public health, 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 15. Amends Sections 401.263(a), (c), (d), (e), and (f), Health and Safety Code, as follows:

(a) Makes conforming changes.

(c) Requires TCEQ to give notice of the analysis as provided by TCEQ, rather than board, rule and to make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) - (f) Makes conforming changes.

SECTION 16. Amends Sections 401.264(a), (c), and (d), Health and Safety Code, as follows:

(a) Provides that TCEQ on its own motion is authorized to or on the written request of a person affected is required to provide an opportunity for a public hearing on an application over which TCEQ has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001 (Administrative Procedure), Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath. Makes conforming changes.

(c) and (d) Makes conforming changes.

SECTION 17. Amends Section 401.265, Health and Safety Code, as follows:

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. Requires TCEQ to prescribe conditions in a radioactive substances license, rather than a material license, issued, renewed, or amended for an activity that results in production of by-product material to minimize or, if possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including certain conditions. Makes conforming changes.

SECTION 18. Amends Section 401.266(a), Health and Safety Code, as follows:

(a) Authorizes TCEQ by rule or order, rather than the board by rule or order or the department by order, to 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, is required to be transferred to the federal government or to the state unless certain circumstances exist.

SECTION 19. Amends Section 401.267, Health and Safety Code, to make conforming changes.

SECTION 20. Amends Section 401.269, Health and Safety Code, to make conforming changes.

SECTION 21. Amends Sections 401.270(a), (b), (e), and (f), Health and Safety Code, to make conforming changes.

SECTION 22. Amends Subchapter G, Chapter 401, Health and Safety Code, by adding Sections 401.271 and 401.272, as follows:

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) Requires a holder of a license issued by TCEQ under this chapter that authorizes the disposal of a radioactive substance from other persons to remit each quarter an amount equal to 10

percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section. Sets forth the percentage of receipts to be remitted to the comptroller for deposit to the credit of the general revenue fund and to host the county.

(b) Provides that Subsection (a) does not apply to compact waste or federal facility waste as defined by Section 401.2005 (Definitions) or industrial solid waste as defined by Section 361.003 (Definitions).

Sec. 401.272. AUDIT AUTHORITY. Authorizes TCEQ to audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. Requires the license holder to comply with TCEQ's audit-related requests for information.

SECTION 23. Amends Section 401.301, Health and Safety Code, as follows:

Sec. 401.301. New heading: LICENSE AND REGISTRATION FEES. (a) Authorizes TCEQ and the department to collect a fee for each license and registration the agency issues.

(b) Requires TCEQ and the board each by rule to set the fee in an amount that is prohibited to exceed the actual expenses annually incurred for certain purposes.

(c) Makes a conforming change.

(d) Authorizes TCEQ and the department to require that each person who holds a specific license issued by the agency, rather than the department, annually pay to the agency an additional five percent of the appropriate annual fee set under Subsection (b).

(e) Makes conforming changes.

(f) Authorizes TCEQ to assess and collect additional fees from the applicant to recover the costs TCEQ incurs for administrative review, technical review, and hearings on the application.

SECTION 24. Amends Section 401.302(a), Health and Safety Code, as follows:

(a) Authorizes the department, in coordination with TCEQ, to set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

SECTION 25. Amends Sections 401.305(c), (e), (f), and (g), Health and Safety Code, as follows:

(c) Makes a conforming change.

(e) Authorizes the department or TCEQ to use money in the perpetual care account to pay for measures for certain purposes.

(f) Makes conforming changes.

(g) Provides that the existence of the perpetual care account does not make the department or TCEQ liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances, rather than radioactive materials, arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department or TCEQ rules.

SECTION 26. Amends Section 401.343, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 27. Amends the heading to Subchapter K, Chapter 401, Health and Safety Code, to read as follows:

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS

SECTION 28. Amends Sections 401.412(a) and (b), Health and Safety Code, as follows:

- (a) Deletes existing text defining "radioactive substance."
- (b) Makes a conforming change.

SECTION 29. Amends Section 401.413, Health and Safety Code, as follows:

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. Deletes existing text providing that this section does not apply to a person required to obtain a license for recovery or processing of source material or for recovery, processing, or disposal of by-product material as defined by Section 401.003(3)(B).

SECTION 30. Amends Section 401.414, Health and Safety Code, as follows:

Sec. 401.414. New heading: MEMORANDA OF UNDERSTANDING. Requires TCEQ, the Health and Human Services Commission (HHSC), and the Railroad Commission of Texas by rule to adopt memoranda of understanding defining their respective duties under this chapter. Deletes existing text requiring the Texas Natural Resource Conservation Commission and the board of health by rule to adopt a memorandum of understanding defining their respective duties under this chapter.

SECTION 31. Amends Section 361.015, Health and Safety Code, as follows:

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) Provides that TCEQ is the state agency under Chapter 401 (Radioactive Materials and Other Sources of Radiation) that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government.

(b) Provides that HHSC, acting through the Department of State Health Services (DSHS) or other department as designated by the executive commissioner of HHSC, is the state agency under Chapter 401 (Radioactive Materials and Other Sources of Radiation) that regulates radioactive waste activities not preemptively regulated by the federal government, except as provided by Subsection (a). Deletes existing text providing that the Texas Department of Health is the state agency under Chapter 401 (Radioactive Materials and Other Sources of Radiation) that regulates radioactive waste activities excluding disposal, not preemptively regulated by the federal government.

SECTION 32. Amends Subchapter D, Chapter 27, Water Code, by adding Section 27.0513, as follows:

Sec. 27.0513. AREA PERMITS AND PRODUCTION AREAS FOR URANIUM MINING. (a) Authorizes TCEQ to issue a permit pursuant to Section 27.011 that authorizes the construction and operation of two or more similar injection wells within a specified area for mining of uranium. Provides that an application for a new permit issued pursuant to Section 27.011 (Permit From Commission), a major amendment of such a permit, or a renewal of such a permit for mining of uranium is subject to the public notice requirements and opportunity for contested case hearing provided under Section 27.018.

(b) Sets forth a timeframe, authority, and obligations regarding a permit to mine for uranium.

(c) Authorizes TCEQ to issue a holder of a permit issued pursuant to Section 27.011 for mining of uranium an authorization that allows the permit holder to conduct mining and restoration activities in production zones within the boundary established in the permit. Requires TCEQ by rule to establish application requirements, technical requirements, including the methods for determining restoration table values, and procedural requirements for any authorization.

(d) Provides that, notwithstanding Sections 5.551, 5.556, 27.011, and 27.018, an application for an authorization submitted after September 1, 2007, is an uncontested matter not subject to a contested case hearing or the hearing requirements of Chapter 2001, Government Code, unless the authorization seeks certain amendments or the initial establishment of specific monitoring wells.

(e) Authorizes the executive director of TCEQ to use an independent third-party expert under certain conditions.

(f) Provides that an application seeking approval under Subsections (d)(1)-(3) is subject to the public notice and contested hearing requirements provided in Section 27.018.

SECTION 33. (a) Transfers certain rights, powers, duties, obligations, functions, activities, property, programs, and appropriations to TCEQ on the effective date of this Act.

(b) Provides that appropriations transferred under Subdivision (4), Subsection (a), of this section are transferred for the remainder of the state fiscal biennium that began on September 1, 2005.

(c) Provides that TCEQ, as of the date of the transfer prescribed by Subsection (a) of this section, has full responsibility for the administration and enforcement of laws related to licensing or regulation of radioactive substances recovery, storage, processing, and disposal under the jurisdiction of TCEQ as provided by Subsection (b), Section 401.011, Health and Safety Code, as amended by this Act, and licensing or regulation of long-term care of decommissioned sites for the disposal of by-product material. Requires TCEQ to carry out all related duties, responsibilities, functions, and activities as provided by law, including those assigned by any other Acts of the 80th Legislature, Regular Session, 2007.

(d) Provides that the transfer of rights, powers, duties, obligations, functions, activities, property, and programs of HHSC or DSHS to TCEQ made by this Act does not affect or impair any act done or obligation, right, license, permit, requirement, or penalty accrued or existing under the former law; that law remains in effect for the purposes of any action concerning such an act done or obligation, right, license, permit, requirement, or penalty. Requires TCEQ to continue a proceeding of HHSC or DSHS that is related to a responsibility, duty, activity, function, or program transferred by this Act, including processing an application for a license or other authorization and including enforcing the requirements of Chapter 401, Health and Safety Code, or a rule adopted under that chapter. Provides that a rule of HHSC or DSHS related to a responsibility, duty, activity, function, or program transferred by this Act is enforceable as a rule of TCEQ until TCEQ adopts other rules.

(e) Requires control of and title to all property and material acquired by this state or an agency of this state under Section 401.267, Health and Safety Code, before the effective date of this Act to be transferred to TCEQ on this state's behalf as soon as practicable. Provides that this subsection does not apply to property or material sold by the state under Subsection (b) of that section before the effective date of this Act.

(f) Requires TCEQ to provide an opportunity for employees of HHSC or DSHS who have performed duties related to a right, power, duty, obligation, responsibility, function, activity, or program transferred by this Act to request a transfer to TCEQ employment. Requires TCEQ to ensure that state and federal requirements are met by TCEQ

employees, and to consider the value of maintaining continuity in the personnel staffing relevant programs in making employment decisions under this subsection.

(g) Requires TCEQ, HHSC, and DSHS to cooperate in preventing any delay that may be caused by or may occur in the transfer of property or personnel or a right, power, duty, obligation, responsibility, function, activity, or program made by this Act.

(h) Authorizes TCEQ to contract with any person to assist TCEQ to expedite the transfers made by this Act of rights, powers, duties, obligations, functions, activities, property, and programs, and to prevent delays related to any of the rights, powers, duties, obligations, functions, activities, property, or programs. Authorizes TCEQ to assess and collect additional fees from an applicant affected by performance under a contract under this subsection to recover TCEQ's contracting costs.

(i) Provides that the transfers made by this Act do not affect any matter that is the subject of a court proceeding pending on the effective date of this Act.

(j) Requires TCEQ to continue any applications review or processing and any hearings that concern a matter subject to transfer under Subsection (a) of this section that, on the date of the transfer, is being conducted by HHSC or DSHS or their successor agencies. Requires the agencies to cooperate and consult with each other to ensure that any delay necessitated by the transfer is minimized to the greatest extent possible. Requires TCEQ to utilize progress made on any technical review or environmental analysis conducted by the department prior to the effective date of this Act.

(k) Requires an application for a new license to dispose of by-product material that is filed with DSHS on or before January 1, 2007, and that has not been referred to the State Office of Administrative Hearings (SOAH) by DSHS before the effective date of this Act to be processed by TCEQ following the effective date of this Act by a certain method.

(l) Provides that this subsection applies only to an applicant for a license subject to Subsection (k) of this section. Authorizes the applicant, at the applicant's own risk, to begin major construction related to the activities for which the application was made and an environmental analysis is prepared under Section 401.263, Health and Safety Code, notwithstanding rules adopted under Subsection (f), Section 401.263, Health and Safety Code, as amended by this Act, and to the extent not prohibited under federal law. Authorizes TCEQ to oversee and govern the construction authorized by this subsection in the same manner and to the same extent as if the construction were authorized by a license issued by TCEQ, and provides that the construction is subject to relevant commission rules as if the construction were authorized by a license issued by TCEQ.

SECTION 34. (a) Provides that this Act does not impair, delay, or affect the priority established by law for processing and review of the application for a license to dispose of low-level radioactive waste that was filed with TCEQ before January 1, 2007.

(b) Requires TCEQ to give priority to the processing and review of the license application described by Subsection (a) of this section over all other applications that pertain to radioactive substances or radioactive waste pending before TCEQ except for those applications the executive director of TCEQ determines are necessarily of a higher priority to avert or address an emergency concerning the public health or safety.

(c) Requires TCEQ to give priority to the review and processing of certain applications subject to the priority given under Subsection (b) of this section to the application.

SECTION 35. Requires an applicant for a license, notwithstanding other law or any rule on the subject of timeliness of an applicant providing information pertaining to an application for a license from TCEQ, to assist TCEQ in meeting any deadlines imposed by Chapter 401, Health and Safety Code, by submitting to TCEQ any information TCEQ requires regarding the application in a prompt and timely manner. Provides that the deadlines imposed by this Act and by Chapter 401, Health and Safety Code, as amended by this Act, are based on the assumptions that the applicant timely submits a complete application and that all requirements are met.

SECTION 36. Effective date: upon passage or the 91st day after the last day of the legislative session.