

BILL ANALYSIS

S.B. 1604
By: Duncan
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Texas Department of State Health Services (department) 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 (commission) 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 the commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1, SECTION 4, SECTION 15, SECTION 18, SECTION 23, SECTION 30 and SECTION 32 of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 30 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 30 of this bill.

ANALYSIS

S.B. 1604 amends Chapters 401 and 361, Health and Safety Code to modify current law related to certain radioactive substances. The bill redefines "board", "commission", "commissioner", "department" and defines "gross receipts".

The bill provides that the Texas Radiation Control Agency has jurisdiction over activities and substances regulated under Chapter 401, Health and Safety Code, except as provided by Subsection (b) and Subchapters E, F, G, and K. The bill grants the commission the jurisdiction to regulate and license certain practices regarding radioactive substances.

The commission is required by rule to provide for licensing for the disposal of radioactive substances. The bill strikes current statutory language related to department rulemaking regarding licensing the disposal of by-product material defined by Section 401.003(3)(B). The bill authorizes a separate commercial storage and processing license to be issued for a site also licensed for disposal under Chapter 401.

S.B. 1604 authorizes the board or commission by rule to exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by Chapter 401 and under the agency's jurisdiction if the board or commission 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.

The bill requires the applicant, before a license is issued or renewed by the commission, to demonstrate to the commission that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to the commission. The bill requires a license holder to submit to the department or commission proof that the license holder has updated, as appropriate, the

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security. The commission is required to reevaluate the qualifications and security provided by a license holder under Subchapters F or G, Chapter 401, at regular intervals not to exceed five years that may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

S.B. 1604 authorizes the commission to require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission to assure performance of the license holder's statutory obligations.

The commission is required, as part of its adoption of 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 unsuitable sites, including certain areas. The commission is required to consult with certain state agencies and other appropriate state agencies in developing proposed rules. The bill directs the commission, by rule, to require certain actions related to siting and licensing.

The bill amends the criteria the commission is required to consider when making a licensing decision on a specific licensing application to process or dispose of low-level radioactive waste from other persons. The bill requires the applicant for a specific license to submit with their application information necessary for the commission to consider the statutory factors. The bill requires the commission by rule to provide specific criteria for certain licensed activities for the statutory factors and may include additional factors and criteria the commission determines is necessary for fully considering a license.

The bill directs the commission to prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity determined to have a significant effect on the human environment and make it available to the public no later than 31 days before a hearing begins.

The bill provides that the commission is authorized, on its own motion or on the written request of a person affected, to provide an opportunity for a public hearing on an application over which the commission 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 and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath. The commission must provide certain notices specified by statute.

The bill requires the commission to prohibit major construction relating to activities to be permitted under a license issued by the commission to process or dispose of low-level radioactive waste from other persons until certain statutory requirements are met.

S.B. 1604 provides that the commission 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. The bill grants the commission the 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.

The bill requires the commission to prescribe conditions in a radioactive substances 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.

The commission is authorized 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.

S.B. 1604 requires a holder of a license issued by the commission under Chapter 401 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 Chapter 401 that occur after the effective date of the Act.

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Five percent will be remitted to the comptroller for deposit to the general revenue fund and five percent to the host county under certain statutory provisions. State fee on radioactive substances does not apply to compact waste, federal facility waste or industrial solid waste as defined by law.

The bill authorizes the commission to audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. It also requires the license holder to comply with the commission's audit-related requests for information.

The bill authorizes the commission and the department to collect a fee, set by the commission and board rule, for each license and registration the agency issues. This fee is prohibited to exceed the actual expenses annually incurred for certain purposes. The commission and the department may require that each person who holds a specific license issued by the agency annually pay to the agency an additional five percent of the appropriate annual radioactive license and registration fee. The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application.

The bill authorizes the department, in coordination with the commission, 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.

The department or the commission is authorized to use money in the perpetual care account to pay for measures for certain purposes. The existence of the perpetual care account does not make the department or the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances 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 the commission rules.

The bill deletes the exemption of 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). S.B. 1604 requires the commission, 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.

The bill amends Chapter 361, Health and Safety Code, to provide that the commission is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government. It provides that HHSC, acting through the department or other department as designated by the executive commissioner of HHSC, is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government with certain exceptions.

S.B. 1604 amends Chapter 27, Water Code. The bill grants the commission the power to issue an injection well permit that authorizes the construction and operation of two or more similar injection wells within a specified area for mining of uranium. Provides that certain permit applications and permit actions are subject to certain public notice requirements and opportunity for contested case hearing under the Water Code. The bill sets forth a timeframe, authority, and obligations regarding a permit to mine for uranium.

It also authorizes the commission to issue an injection well permit holder 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. The bill requires the commission to establish application requirements, technical requirements, including the methods for determining restoration table values, and procedural requirements for any authorization. The bill applies terms and expiration dates for certain permits issued by the commission.

The bill provides that an application for an authorization submitted after September 1, 2007, that allows mining and restoration activities in production zones within the boundary established in the permit is an uncontested matter not subject to a contested case hearing or the hearing

requirements of Chapter 2001, Government Code, notwithstanding certain sections of the Water Code. It provides that an application filed by the holder of a permit to amend a restoration table value of an authorization is subject to certain public notice requirements and opportunity for contested case hearing under the Water Code.

S.B. 1604 sets forth provisions relating to the transfer of certain rights, powers, duties, obligations, functions, activities, property, programs, and appropriations to commission. Finally, the bill makes certain conforming changes related to the bill's transfer of responsibilities from the department to the commission.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect on the 91st day after the last day of the legislative session.