

By: Duncan

S.B. No. 1604

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to responsibilities of certain state agencies concerning  
3 radioactive substances; imposing fees and surcharges; providing  
4 administrative and civil penalties.

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

6 SECTION 1. Section 401.003, Health and Safety Code, is  
7 amended by amending Subdivisions (2), (4), (5), and (6) and by  
8 adding Subdivision (12-a) to read as follows:

9 (2) "Board" means the executive commissioner of the  
10 Health and Human Services Commission [~~Texas Board of Health~~].

11 (4) "Commission" means the Texas [~~Natural Resource~~  
12 ~~Conservation~~] Commission on Environmental Quality.

13 (5) "Commissioner" means the commissioner of state  
14 [~~public~~] health services.

15 (6) "Department" means the [~~Texas~~] Department of State  
16 Health Services or other department designated by the executive  
17 commissioner of the Health and Human Services Commission.

18 (12-a) "Gross receipts" includes, with respect to an  
19 entity or affiliated members, owners, shareholders, or limited or  
20 general partners, all receipts from the entity's disposal  
21 operations in Texas licensed under this chapter including any  
22 bonus, commission, or similar payment received by the entity from a  
23 customer, contractor, subcontractor, or other person doing  
24 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, bona fide storage and  
5 processing, and federal or state taxes or fees on waste received  
6 uniquely required to meet the specifications of a license or  
7 contract. The commission may promulgate rules in establishing the  
8 criteria for determining gross receipts consistent with the  
9 parameters of this definition.

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

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

16 (b) The commission has jurisdiction to regulate and  
17 license:

18 (1) the disposal of radioactive substances;

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

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

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

26 (5) sites for the disposal of:

27 (A) low-level radioactive waste;

1                    (B) by-product material; or

2                    (C) naturally occurring radioactive material  
3 waste [~~except by-product material defined by Section~~  
4 ~~401.003(3)(B)]].~~

5            SECTION 3. Section 401.104, Health and Safety Code, is  
6 amended by amending Subsection (b) and adding Subsection (f) to  
7 read as follows:

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

14            (f) A separate commercial storage and processing license  
15 may be issued for a site also licensed for disposal under this  
16 chapter.

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

19            (a) The board or commission by rule may exempt a source of  
20 radiation or a kind of use or user from the licensing or  
21 registration requirements provided by this chapter and under the  
22 agency's jurisdiction if the board or commission finds that the  
23 exemption of that source of radiation or kind of use or user will  
24 not constitute a significant risk to the public health and safety  
25 and the environment.

26            SECTION 5. Section 401.108, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a  
2 license is issued or renewed by the commission, the applicant shall  
3 demonstrate to the commission that the applicant is financially  
4 qualified to conduct the licensed activity, including any required  
5 decontamination, decommissioning, reclamation, and disposal, by  
6 posting security acceptable to the commission. [~~The board by rule~~  
7 ~~shall require an applicant to demonstrate to the department that~~  
8 ~~the applicant is financially qualified to conduct the licensed~~  
9 ~~activity, including any required decontamination, decommissioning,~~  
10 ~~reclamation, and disposal, before the department issues or renews a~~  
11 ~~license.~~]

12           (b) A license holder shall submit to the department or  
13 commission, as appropriate, at intervals required by board or  
14 commission rules or the license, proof that the license holder has  
15 updated, as appropriate, the security posted under Subsection (a)  
16 [~~of the license holder's financial qualifications~~].

17           (c) The [~~department or~~] commission at regular intervals not  
18 to exceed five years shall reevaluate [~~every five years~~] the  
19 qualifications and security provided by a license holder under  
20 Subchapter F or Subchapter G. The reevaluation may coincide with  
21 license renewal procedures if renewal and reevaluation occur in the  
22 same year.

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

25           (b) The [~~department or~~] commission shall require a holder of  
26 a license that authorizes the disposal of radioactive substances  
27 [~~low-level radioactive waste as provided by Subchapter F~~] to

1 provide security acceptable to the commission [~~agency~~] to assure  
2 performance of the license holder's obligations under this chapter.

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

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

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

12 (1) flood hazard areas;

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

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

17 (b) The [~~board and~~] commission [~~each~~] shall consult with the  
18 Texas Water Development Board, the State Soil and Water  
19 Conservation Board, the Bureau of Economic Geology, and other  
20 appropriate state agencies in developing proposed rules. The  
21 [~~board and~~] commission [~~each~~] by rule shall:

22 (1) require selection of sites in areas in which  
23 natural conditions minimize potential contamination of surface  
24 water and groundwater; and

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

27 SECTION 8. Section 401.112, Health and Safety Code, is

1 amended to read as follows:

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

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

10           (2) compatibility with present uses of land near the  
11 site;

12           (3) socioeconomic effects on surrounding communities  
13 of operation of the licensed activity and of associated  
14 transportation of low-level radioactive waste;

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

18           (5) the applicant's qualifications, including:

19                   (A) financial and technical qualifications and  
20 compliance history under the method for evaluation of compliance  
21 history developed by the commission under Section 5.754, Water  
22 Code, for an application to the commission; and

23                           (B) the demonstration of financial  
24 qualifications under Section 401.108 [~~or the requirements of~~  
25 ~~Section 401.110(b) for an application to the department~~];

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

27           (7) suitability of facilities associated with the

1 proposed activities;

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

5 (9) adequate insurance of the applicant to cover  
6 potential injury to any property or person, including potential  
7 injury from risks relating to transportation;

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

9 (11) a monitoring, record-keeping, and reporting  
10 program;

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

14 (13) decommissioning and postclosure care plans;

15 (14) security plans;

16 (15) worker monitoring and protection plans;

17 (16) emergency plans; and

18 (17) a monitoring program for applicants that includes  
19 prelicense and postlicense monitoring of background radioactive  
20 and chemical characteristics of the soils, groundwater, and  
21 vegetation.

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

25 (c) The [~~board and~~] commission [~~each within its~~  
26 ~~jurisdiction~~] by rule shall provide specific criteria for the  
27 different types of licensed low-level radioactive waste activities

1 for the listed factors and may include additional factors and  
2 criteria that the [~~board or~~] commission[~~, as appropriate,~~]  
3 determines necessary for full consideration of a license.

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

6 (a) Before a hearing under Section 401.114 begins, the  
7 commission [~~agency holding the hearing~~] shall prepare or have  
8 prepared a written analysis of the effect on the environment of a  
9 proposed licensed activity that the commission [~~agency~~] determines  
10 has a significant effect on the human environment.

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

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

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

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



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

10           SECTION 11. Section 401.117, Health and Safety Code, is  
11 amended to read as follows:

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

18           SECTION 12. Subsection (a), Section 401.202, Health and  
19 Safety Code, is amended to read as follows:

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

24           SECTION 13. Section 401.262, Health and Safety Code, is  
25 amended to read as follows:

26           Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL.  
27 The commission [~~department~~] has sole and exclusive authority to

1 assure that processing and disposal sites are closed and that  
2 by-product material is managed and disposed of in compliance with:

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

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

7 SECTION 14. Section 401.2625, Health and Safety Code, is  
8 amended to read as follows:

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

14 SECTION 15. Subsections (a), (c), (d), (e), and (f),  
15 Section 401.263, Health and Safety Code, are amended to read as  
16 follows:

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

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

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

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

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

10 SECTION 16. Subsections (a), (c), and (d), Section 401.264,  
11 Health and Safety Code, are amended to read as follows:

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

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

25 (d) The commission [~~department~~] shall provide an  
26 opportunity to obtain a written determination of action to be  
27 taken. The determination must be based on evidence presented to the

1 commission [~~department~~] and include findings. The written  
2 determination is available to the public.

3 SECTION 17. Section 401.265, Health and Safety Code, is  
4 amended to read as follows:

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

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

18 (2) the ownership of a disposal site, other than a  
19 disposal well covered by a permit issued under Chapter 27, Water  
20 Code, and the by-product material resulting from the licensed  
21 activity are transferred, subject to Sections 401.266-401.269, to:

22 (A) the state; or

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

26 SECTION 18. Subsection (a), Section 401.266, Health and  
27 Safety Code, is amended to read as follows:

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

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

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

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

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

23           (b) The commission [~~department~~] may sell land acquired  
24 under this section at the land's fair market value after the  
25 commission [~~department~~] has taken corrective action to restore the  
26 land to a condition that does not compromise the public health or  
27 safety or the environment. The General Land Office shall negotiate

1 and close a transaction under this subsection on behalf of the  
2 commission [~~department~~] using procedures under Section 31.158(c),  
3 Natural Resources Code. Proceeds from the transaction shall be  
4 deposited in the Texas capital trust fund.

5 SECTION 20. Section 401.269, Health and Safety Code, is  
6 amended to read as follows:

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

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

16 SECTION 21. Subsections (a), (b), (e), and (f), Section  
17 401.270, Health and Safety Code, are amended to read as follows:

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

24 (b) The commission [~~department~~] may issue an emergency  
25 order to a person responsible for an activity, including a past  
26 activity, concerning the recovery or processing of source material  
27 or the disposal of by-product material if it appears that there is

1 an actual or threatened release of source material or by-product  
2 material that presents an imminent and substantial danger to the  
3 public health and safety or the environment, regardless of whether  
4 the activity was lawful at the time. The emergency order may be  
5 issued without notice or hearing.

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

12 (1) enforce security supplied by the licensee;

13 (2) convert an amount of security into cash, as  
14 necessary; and

15 (3) disburse from the security in the perpetual care  
16 account the amount necessary to pay the costs.

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

27 SECTION 22. Subchapter G, Chapter 401, Health and Safety

1 Code, is amended by adding Sections 401.271 and 401.272 to read as  
2 follows:

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

11 (1) eight percent shall be remitted to the comptroller  
12 for deposit into the general revenue fund; and

13 (2) two percent shall be remitted to the host county in  
14 accordance with Sections 401.244(b) and (d).

15 (b) Subsection (a) does not apply to compact waste or  
16 federal facility waste as defined by Section 401.2005 or industrial  
17 solid waste as defined by Section 361.003.

18 Sec. 401.272. AUDIT AUTHORITY. The commission may audit a  
19 license holder's financial records and waste manifest information  
20 to ensure that the fees imposed under this chapter are accurately  
21 paid. The license holder shall comply with the commission's  
22 audit-related requests for information.

23 SECTION 23. Section 401.301, Health and Safety Code, is  
24 amended to read as follows:

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



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

4 (1) process applications for licenses or  
5 registrations;

6 (2) amend or renew licenses or registrations;

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

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

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

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

22 (e) The commission and department shall suspend assessment  
23 of a fee imposed under Subsection (d) if the amount of fees  
24 collected under that subsection reaches \$500,000. If the balance  
25 of fees collected subsequently is reduced to \$350,000 or less, the  
26 commission and department shall reinstitute assessment of the fee  
27 until the balance reaches \$500,000.

1        (f) The commission may assess and collect additional fees  
2 from the applicant to recover the costs the commission incurs for  
3 administrative review, technical review, and hearings on the  
4 application.

5        SECTION 24. Subsection (a), Section 401.302, Health and  
6 Safety Code, is amended to read as follows:

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

11        SECTION 25. Subsections (c), (e), (f), and (g), Section  
12 401.305, Health and Safety Code, are amended to read as follows:

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

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

22            (1) to prevent or mitigate the adverse effects of  
23 abandonment of radioactive substances [~~materials~~], default on a  
24 lawful obligation, insolvency, or other inability by the holder of  
25 a license issued by the department or commission to meet the  
26 requirements of this chapter or of department or commission rules;  
27 and

1           (2) to assure the protection of the public health and  
2 safety and the environment from the adverse effects of ionizing  
3 radiation.

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

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

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

22           Sec. 401.343. RECOVERY OF SECURITY. (a) The department or  
23 commission shall seek reimbursement, either by an order of the  
24 department or commission or a suit filed by the attorney general at  
25 the [~~department's~~] request of the department or commission, of  
26 security from the perpetual care account used by the department or  
27 commission to pay for actions, including corrective measures, to

1 remedy spills or contamination by radioactive substances  
2 [~~material~~] resulting from a violation of this chapter relating to  
3 an activity under the [~~department's~~] jurisdiction of the department  
4 or commission or a violation of a rule, license, registration, or  
5 order adopted or issued by the department or commission under this  
6 chapter.

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

9 SECTION 27. The heading to Subchapter K, Chapter 401,  
10 Health and Safety Code, is amended to read as follows:

11 SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS [~~NATURAL RESOURCE~~  
12 ~~CONSERVATION~~] COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD  
13 COMMISSION OF TEXAS

14 SECTION 28. Subsections (a) and (b), Section 401.412,  
15 Health and Safety Code, are amended to read as follows:

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

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

1 SECTION 29. Section 401.413, Health and Safety Code, is  
2 amended to read as follows:

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

11 SECTION 30. Section 401.414, Health and Safety Code, is  
12 amended to read as follows:

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

19 SECTION 31. Section 361.015, Health and Safety Code, is  
20 amended to read as follows:

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

25 (b) Except as provided by Subsection (a), the Health and  
26 Human Services Commission, acting through the Department of State  
27 Health Services or other department as designated by the executive

1 commissioner of the Health and Human Services Commission, [~~The~~  
2 ~~Texas Department of Health~~] is the state agency under Chapter 401  
3 that regulates radioactive waste activities [~~, excluding disposal,~~]  
4 not preemptively regulated by the federal government.

5 SECTION 32. Subchapter D, Chapter 27, Water Code, is  
6 amended by adding Section 27.0513 to read as follows:

7 Sec. 27.0513. AREA PERMITS AND PRODUCTION AREAS FOR URANIUM  
8 MINING. (a) The commission may issue a permit pursuant to Section  
9 27.011 that authorizes the construction and operation of two or  
10 more similar injection wells within a specified area for mining of  
11 uranium. An application for a new permit issued pursuant to Section  
12 27.011, a major amendment of such a permit, or a renewal of such a  
13 permit for mining of uranium is subject to the public notice  
14 requirements and opportunity for contested case hearing provided  
15 under Section 27.018.

16 (b) For a permit for mining of uranium issued on or after  
17 September 1, 2007, pursuant to Section 27.011, the term of the  
18 permit to authorize injection for recovery of uranium shall be 10  
19 years. The holder of a permit for mining of uranium issued by the  
20 commission before September 1, 2007, pursuant to Section 27.011  
21 must submit an application to the commission before September 1,  
22 2012, for renewal of the permit to authorize construction and  
23 operation of injection wells for mining of uranium. Authority to  
24 construct or operate injection wells for recovery of uranium under  
25 a permit issued before September 1, 2007, pursuant to Section  
26 27.011 expires on September 1, 2012, if an application for renewal  
27 of the permit is not submitted to the commission before September 1,

1 2012. Expiration of authority under this subsection does not  
2 relieve the permit holder from obligations under the permit or  
3 applicable rules, including obligations to restore groundwater and  
4 to plug and abandon wells in accordance with the requirements of the  
5 permit and applicable rules.

6 (c) The commission may issue a holder of a permit issued  
7 pursuant to Section 27.011 for mining of uranium an authorization  
8 that allows the permit holder to conduct mining and restoration  
9 activities in production zones within the boundary established in  
10 the permit. The commission by rule shall establish application  
11 requirements, technical requirements, including the methods for  
12 determining restoration table values, and procedural requirements  
13 for any authorization.

14 (d) Notwithstanding Sections 5.551, 5.556, 27.011, and  
15 27.018, an application for an authorization submitted after  
16 September 1, 2007, is an uncontested matter not subject to a  
17 contested case hearing or the hearing requirements of Chapter 2001,  
18 Government Code. An application filed by the holder of a permit  
19 issued pursuant to Section 27.011 to amend a restoration table  
20 value of an authorization is subject to the public notice  
21 requirements and opportunity for contested case hearing provided  
22 under Section 27.018.

23 SECTION 33. (a) On the effective date of this Act, the  
24 following rights, powers, duties, obligations, functions,  
25 activities, property, programs, and appropriations are transferred  
26 to the Texas Commission on Environmental Quality:

27 (1) all rights, powers, duties, obligations,

1 functions, and activities:

2 (A) that Chapter 401, Health and Safety Code,  
3 assigns to the Texas Department of Health, the Texas Board of  
4 Health, or their successor agencies or to the governing body,  
5 officers, or employees of that department, that board, or their  
6 successor agencies, including the Health and Human Services  
7 Commission and the Department of State Health Services; and

8 (B) that are related to licensing and regulation  
9 of:

10 (i) radioactive substances recovery,  
11 storage, processing, and disposal; or

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

14 (2) all equipment, information, documents,  
15 facilities, and other property of the Health and Human Services  
16 Commission or the Department of State Health Services pertaining to  
17 licensing and regulation of:

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

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

24 (3) all appropriations for the state fiscal biennium  
25 that begins September 1, 2007, made to the Health and Human  
26 Services Commission or the Department of State Health Services for  
27 activities related to licensing and regulation of:



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

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

7 (4) the unexpended and unobligated portions of the  
8 appropriations for the state fiscal biennium beginning  
9 September 1, 2005, made to the Health and Human Services Commission  
10 or the Department of State Health Services for activities described  
11 by Subdivision (3) of this subsection.

12 (b) Appropriations transferred under Subdivision (4),  
13 Subsection (a), of this section are transferred for the remainder  
14 of that state fiscal biennium.

15 (c) The Texas Commission on Environmental Quality, as of the  
16 date of the transfer prescribed by Subsection (a) of this section,  
17 has full responsibility for the administration and enforcement of  
18 laws related to licensing or regulation of radioactive substances  
19 recovery, storage, processing, and disposal under the jurisdiction  
20 of the commission as provided by Subsection (b), Section 401.011,  
21 Health and Safety Code, as amended by this Act, and licensing or  
22 regulation of long-term care of decommissioned sites for the  
23 disposal of by-product material. The Texas Commission on  
24 Environmental Quality shall carry out all related duties,  
25 responsibilities, functions, and activities as provided by law,  
26 including those assigned by any other Acts of the 80th Legislature,  
27 Regular Session, 2007.

1           (d) The transfer of rights, powers, duties, obligations,  
2 functions, activities, property, and programs of the Health and  
3 Human Services Commission or the Department of State Health  
4 Services to the Texas Commission on Environmental Quality made by  
5 this Act does not affect or impair any act done or obligation,  
6 right, license, permit, requirement, or penalty accrued or existing  
7 under the former law; that law remains in effect for the purposes of  
8 any action concerning such an act done or obligation, right,  
9 license, permit, requirement, or penalty. The Texas Commission on  
10 Environmental Quality shall continue a proceeding of the Health and  
11 Human Services Commission or the Department of State Health  
12 Services that is related to a responsibility, duty, activity,  
13 function, or program transferred by this Act, including processing  
14 an application for a license or other authorization and including  
15 enforcing the requirements of Chapter 401, Health and Safety Code,  
16 or a rule adopted under that chapter. A rule of the Health and Human  
17 Services Commission or the Department of State Health Services  
18 related to a responsibility, duty, activity, function, or program  
19 transferred by this Act is enforceable as a rule of the Texas  
20 Commission on Environmental Quality until the Texas Commission on  
21 Environmental Quality adopts other rules.

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

1 under Subsection (b) of that section before the effective date of  
2 this Act.

3 (f) The Texas Commission on Environmental Quality shall  
4 provide an opportunity for employees of the Health and Human  
5 Services Commission or the Department of State Health Services who  
6 have performed duties related to a right, power, duty, obligation,  
7 responsibility, function, activity, or program transferred by this  
8 Act to request a transfer to commission employment. In making  
9 employment decisions under this subsection, the Texas Commission on  
10 Environmental Quality shall:

11 (1) ensure that state and federal requirements are met  
12 by commission employees; and

13 (2) consider the value of maintaining continuity in  
14 the personnel staffing relevant programs.

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

21 (h) To expedite the transfers made by this Act of rights,  
22 powers, duties, obligations, functions, activities, property, and  
23 programs, and to prevent delays related to any of the rights,  
24 powers, duties, obligations, functions, activities, property, or  
25 programs, the Texas Commission on Environmental Quality may  
26 contract with any person to assist the commission. The commission  
27 may assess and collect additional fees from an applicant affected

1 by performance under a contract under this subsection to recover  
2 the commission's contracting costs.

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

6 (j) The Texas Commission on Environmental Quality shall  
7 continue any applications review or processing and any hearings  
8 that concern a matter subject to transfer under Subsection (a) of  
9 this section that, on the date of the transfer, is being conducted  
10 by the Health and Human Services Commission or the Department of  
11 State Health Services or their successor agencies. The agencies  
12 shall cooperate and consult with each other to ensure that any delay  
13 necessitated by the transfer is minimized to the greatest extent  
14 possible. The Texas Commission on Environmental Quality shall  
15 utilize progress made on any technical review or environmental  
16 analysis conducted by the department prior to the effective date of  
17 this Act.

18 (k) An application for a new license to dispose of  
19 by-product material that is filed with the Department of State  
20 Health Services on or before January 1, 2007, and that has not been  
21 referred to the State Office of Administrative Hearings by the  
22 department before the effective date of this Act shall be processed  
23 by the Texas Commission on Environmental Quality following the  
24 effective date of this Act as follows:

25 (1) a license application subject to this subsection  
26 shall be governed only by the technical rules and regulations of the  
27 department that are effective on the effective date of this Act;

1           (2) the commission shall complete any technical review  
2 of a license application subject to this subsection and determine  
3 whether a draft license shall be issued on or before October 1,  
4 2007. The commission shall utilize progress made on any technical  
5 review or environmental analysis conducted by the department before  
6 the effective date of this Act. In order to meet the deadline  
7 provided by this subdivision, the commission may contract with the  
8 department or other entities for completion of any portion of the  
9 technical review that has not been completed upon the effective  
10 date of this Act. The commission may assess and collect additional  
11 fees from the applicant to recover costs the commission incurs for  
12 technical review of a license application subject to this  
13 subsection;

14           (3) the commission shall render a final decision on a  
15 license application subject to this subsection on or before  
16 December 31, 2008; and

17           (4) a contested case hearing held on a license  
18 application subject to this subsection that was filed with the  
19 department on or before January 1, 2007, may not exceed one year in  
20 duration, measured from the date of referral by the commission of  
21 the application to the State Office of Administrative Hearings  
22 until the commission makes a final decision on the application.  
23 Discovery in such a hearing shall be limited to not more than 60  
24 days in order to meet this limitation. Notice of hearing shall be  
25 provided to the applicant, the office of public interest counsel,  
26 the executive director of the commission, and the person who timely  
27 requested a contested case hearing by mail at least 10 days in

1 advance of the hearing.

2 SECTION 34. (a) This Act does not impair, delay, or affect  
3 the priority established by law for processing and review of the  
4 application for a license to dispose of low-level radioactive waste  
5 that was filed with the Texas Commission on Environmental Quality  
6 before January 1, 2007.

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

16 (c) Subject to the priority given under Subsection (b) of  
17 this section to the application, the Texas Commission on  
18 Environmental Quality shall give priority to the review and  
19 processing of:

20 (1) an application for the commercial disposal of  
21 by-product material;

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

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

1           SECTION 35. Notwithstanding other law or any rule on the  
2 subject of timeliness of an applicant providing information  
3 pertaining to an application for a license from the Texas  
4 Commission on Environmental Quality, the applicant for a license  
5 shall assist the commission in meeting any deadlines imposed by  
6 Chapter 401, Health and Safety Code, by submitting to the  
7 commission any information the commission requires regarding the  
8 application in a prompt and timely manner. The deadlines imposed by  
9 this Act and by Chapter 401, Health and Safety Code, as amended by  
10 this Act, are based on the assumptions that the applicant timely  
11 submits a complete application and that all requirements are met.

12           SECTION 36. This Act takes effect immediately if it  
13 receives a vote of two-thirds of all the members elected to each  
14 house, as provided by Section 39, Article III, Texas Constitution.  
15 If this Act does not receive the vote necessary for immediate  
16 effect, this Act takes effect on the 91st day after the last day of  
17 the legislative session.