

1-1 By: Duncan S.B. No. 1604
1-2 (In the Senate - Filed March 8, 2007; March 21, 2007, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 11, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 10, Nays 0, 1 present not
1-6 voting; April 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1604 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to responsibilities of certain state agencies concerning
1-11 radioactive substances; imposing fees and surcharges; providing
1-12 administrative and civil penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 401.003, Health and Safety Code, is
1-15 amended by amending Subdivisions (2), (4), (5), and (6) and by
1-16 adding Subdivision (12-a) to read as follows:

1-17 (2) "Board" means the executive commissioner of the
1-18 Health and Human Services Commission [~~Texas Board of Health~~].

1-19 (4) "Commission" means the Texas [~~Natural Resource~~
1-20 ~~Conservation~~] Commission on Environmental Quality.

1-21 (5) "Commissioner" means the commissioner of state
1-22 [~~public~~] health services.

1-23 (6) "Department" means the [~~Texas~~] Department of State
1-24 Health Services or other department designated by the executive
1-25 commissioner of the Health and Human Services Commission.

1-26 (12-a) "Gross receipts" includes, with respect to an
1-27 entity or affiliated members, owners, shareholders, or limited or
1-28 general partners, all receipts from the entity's disposal
1-29 operations in Texas licensed under this chapter including any
1-30 bonus, commission, or similar payment received by the entity from a
1-31 customer, contractor, subcontractor, or other person doing
1-32 business with the entity or affiliated members, owners,
1-33 shareholders, or limited or general partners. This term does not
1-34 include receipts from the entity's operations in Texas, or
1-35 affiliated members, owners, shareholders, or limited or general
1-36 partners, for capital reimbursements, bona fide storage and
1-37 processing, and federal or state taxes or fees on waste received
1-38 uniquely required to meet the specifications of a license or
1-39 contract. The commission may promulgate rules in establishing the
1-40 criteria for determining gross receipts consistent with the
1-41 parameters of this definition.

1-42 SECTION 2. Subsections (a) and (b), Section 401.011, Health
1-43 and Safety Code, are amended to read as follows:

1-44 (a) The department is the Texas Radiation Control Agency.
1-45 The department has jurisdiction over activities and substances
1-46 regulated under this chapter except as provided by Subsection (b)
1-47 and Subchapters E, F, G, and K.

1-48 (b) The commission has jurisdiction to regulate and
1-49 license:

1-50 (1) the disposal of radioactive substances;

1-51 (2) the processing or storage of low-level radioactive
1-52 waste or naturally occurring radioactive material waste received
1-53 from other persons, except oil and gas NORM;

1-54 (3) the recovery or processing of source material in
1-55 accordance with Subchapter G;

1-56 (4) the processing of by-product material as defined
1-57 by Section 401.003(3)(B); and

1-58 (5) sites for the disposal of:

1-59 (A) low-level radioactive waste;

1-60 (B) by-product material; or

1-61 (C) naturally occurring radioactive material
1-62 waste [~~except by-product material defined by Section~~
1-63 ~~401.003(3)(B)~~].

2-1 SECTION 3. Section 401.104, Health and Safety Code, is
 2-2 amended by amending Subsection (b) and adding Subsection (f) to
 2-3 read as follows:

2-4 (b) Except as provided by Subsection (e), the commission by
 2-5 rule shall provide for licensing for the disposal of radioactive
 2-6 substances ~~[material except for the disposal of by-product material~~
 2-7 ~~defined by Section 401.003(3)(B)]. The department by rule shall~~
 2-8 ~~provide for licensing the disposal of by-product material defined~~
 2-9 ~~by Section 401.003(3)(B)].~~

2-10 (f) A separate commercial storage and processing license
 2-11 may be issued for a site also licensed for disposal under this
 2-12 chapter.

2-13 SECTION 4. Subsection (a), Section 401.106, Health and
 2-14 Safety Code, is amended to read as follows:

2-15 (a) The board or commission by rule may exempt a source of
 2-16 radiation or a kind of use or user from the licensing or
 2-17 registration requirements provided by this chapter and under the
 2-18 agency's jurisdiction if the board or commission finds that the
 2-19 exemption of that source of radiation or kind of use or user will
 2-20 not constitute a significant risk to the public health and safety
 2-21 and the environment.

2-22 SECTION 5. Section 401.108, Health and Safety Code, is
 2-23 amended to read as follows:

2-24 Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a
 2-25 license is issued or renewed by the commission, the applicant shall
 2-26 demonstrate to the commission that the applicant is financially
 2-27 qualified to conduct the licensed activity, including any required
 2-28 decontamination, decommissioning, reclamation, and disposal, by
 2-29 posting security acceptable to the commission. ~~[The board by rule~~
 2-30 ~~shall require an applicant to demonstrate to the department that~~
 2-31 ~~the applicant is financially qualified to conduct the licensed~~
 2-32 ~~activity, including any required decontamination, decommissioning,~~
 2-33 ~~reclamation, and disposal, before the department issues or renews a~~
 2-34 ~~license.]~~

2-35 (b) A license holder shall submit to the department or
 2-36 commission, as appropriate, at intervals required by board or
 2-37 commission rules or the license, proof that the license holder has
 2-38 updated, as appropriate, the security posted under Subsection (a)
 2-39 [of the license holder's financial qualifications].

2-40 (c) The ~~[department or]~~ commission at regular intervals not
 2-41 to exceed five years shall reevaluate [every five years] the
 2-42 qualifications and security provided by a license holder under
 2-43 Subchapter F or Subchapter G. The reevaluation may coincide with
 2-44 license renewal procedures if renewal and reevaluation occur in the
 2-45 same year.

2-46 SECTION 6. Subsection (b), Section 401.109, Health and
 2-47 Safety Code, is amended to read as follows:

2-48 (b) The ~~[department or]~~ commission shall require a holder of
 2-49 a license that authorizes the disposal of radioactive substances
 2-50 [low-level radioactive waste as provided by Subchapter F] to
 2-51 provide security acceptable to the commission [agency] to assure
 2-52 performance of the license holder's obligations under this chapter.

2-53 SECTION 7. Section 401.111, Health and Safety Code, is
 2-54 amended to read as follows:

2-55 Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

2-56 (a) The ~~[board and]~~ commission [each], in adopting rules for the
 2-57 issuance of licenses under the commission's jurisdiction [their
 2-58 respective jurisdictions] for new sites for processing or disposal
 2-59 of radioactive substances [low-level radioactive waste] from other
 2-60 persons, shall adopt criteria for the designation of unsuitable
 2-61 sites, including:

- 2-62 (1) flood hazard areas;
- 2-63 (2) areas with characteristics of discharge from or
- 2-64 recharge of a groundwater aquifer system; or
- 2-65 (3) areas in which soil conditions make spill cleanup
- 2-66 impracticable.

2-67 (b) The ~~[board and]~~ commission [each] shall consult with the
 2-68 Texas Water Development Board, the State Soil and Water
 2-69 Conservation Board, the Bureau of Economic Geology, and other

3-1 appropriate state agencies in developing proposed rules. The
3-2 [~~board and~~] commission [~~each~~] by rule shall:

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

3-6 (2) prohibit issuance of licenses for unsuitable sites
3-7 as defined by the rules.

3-8 SECTION 8. Section 401.112, Health and Safety Code, is
3-9 amended to read as follows:

3-10 Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR
3-11 DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The
3-12 [~~department or~~] commission [~~, within its jurisdiction~~], in making a
3-13 licensing decision on a specific license application to process or
3-14 dispose of low-level radioactive waste from other persons, shall
3-15 consider:

3-16 (1) site suitability, geological, hydrological, and
3-17 meteorological factors, and natural [~~naturals~~] hazards;

3-18 (2) compatibility with present uses of land near the
3-19 site;

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

3-23 (4) the need for and alternatives to the proposed
3-24 activity, including an alternative siting analysis prepared by the
3-25 applicant;

3-26 (5) the applicant's qualifications, including:

3-27 (A) financial and technical qualifications and
3-28 compliance history under the method for evaluation of compliance
3-29 history developed by the commission under Section 5.754, Water
3-30 Code, for an application to the commission; and

3-31 (B) the demonstration of financial
3-32 qualifications under Section 401.108 [~~or the requirements of~~
3-33 ~~Section 401.110(b) for an application to the department~~];

3-34 (6) background monitoring plans for the proposed site;

3-35 (7) suitability of facilities associated with the
3-36 proposed activities;

3-37 (8) chemical, radiological, and biological
3-38 characteristics of the low-level radioactive waste and waste
3-39 classification under Section 401.053;

3-40 (9) adequate insurance of the applicant to cover
3-41 potential injury to any property or person, including potential
3-42 injury from risks relating to transportation;

3-43 (10) training programs for the applicant's employees;

3-44 (11) a monitoring, record-keeping, and reporting
3-45 program;

3-46 (12) spill detection and cleanup plans for the
3-47 licensed site and related to associated transportation of low-level
3-48 radioactive waste;

3-49 (13) decommissioning and postclosure care plans;

3-50 (14) security plans;

3-51 (15) worker monitoring and protection plans;

3-52 (16) emergency plans; and

3-53 (17) a monitoring program for applicants that includes
3-54 prelicense and postlicense monitoring of background radioactive
3-55 and chemical characteristics of the soils, groundwater, and
3-56 vegetation.

3-57 (b) An applicant for the specific license must submit with
3-58 the application information necessary for the commission [~~issuing~~
3-59 ~~agency~~] to consider the factors under Subsection (a).

3-60 (c) The [~~board and~~] commission [~~each within its~~
3-61 ~~jurisdiction~~] by rule shall provide specific criteria for the
3-62 different types of licensed low-level radioactive waste activities
3-63 for the listed factors and may include additional factors and
3-64 criteria that the [~~board or~~] commission [~~, as appropriate,~~]
3-65 determines necessary for full consideration of a license.

3-66 SECTION 9. Subsections (a) and (b), Section 401.113, Health
3-67 and Safety Code, are amended to read as follows:

3-68 (a) Before a hearing under Section 401.114 begins, the
3-69 commission [~~agency holding the hearing~~] shall prepare or have

4-1 prepared a written analysis of the effect on the environment of a
4-2 proposed licensed activity that the commission [~~agency~~] determines
4-3 has a significant effect on the human environment.

4-4 (b) The commission [~~agency~~] shall make the analysis
4-5 available to the public not later than the 31st day before the date
4-6 of a hearing under Section 401.114.

4-7 SECTION 10. Section 401.114, Health and Safety Code, is
4-8 amended to read as follows:

4-9 Sec. 401.114. NOTICE AND HEARING. (a) Before the
4-10 [~~department or~~] commission [~~, within its jurisdiction,~~] grants or
4-11 renews a license to process or dispose of low-level radioactive
4-12 waste from other persons, the commission [~~agency~~] shall give notice
4-13 and shall provide an opportunity for a public hearing in the manner
4-14 provided by the commission's [~~agency's~~] formal hearing procedure
4-15 and Chapter 2001, Government Code.

4-16 (b) In addition to other notice, the commission [~~agency~~]
4-17 shall publish notice of the hearing in the manner provided by
4-18 Chapter 313, Government Code, in the county in which the proposed
4-19 facility is to be located. The notice shall state the subject and
4-20 the time, place, and date of the hearing.

4-21 (c) The commission [~~agency~~] shall mail, by certified mail in
4-22 the manner provided by the commission's [~~agency's~~] rules, written
4-23 notice to each person who owns property adjacent to the proposed
4-24 site. The notice must be mailed not later than the 31st day before
4-25 the date of the hearing and must include the same information that
4-26 is in the published notice. If true, the commission [~~agency~~] or the
4-27 applicant must certify that the notice was mailed as required by
4-28 this subsection, and at the hearing the certificate is conclusive
4-29 evidence of the mailing.

4-30 SECTION 11. Section 401.117, Health and Safety Code, is
4-31 amended to read as follows:

4-32 Sec. 401.117. CONSTRUCTION LIMITATION. The [~~department or~~]
4-33 commission shall prohibit major construction relating to
4-34 activities to be permitted under a license issued by the commission
4-35 [~~agency~~] to process or dispose of low-level radioactive waste from
4-36 other persons until the requirements in Sections 401.113 and
4-37 401.114 are completed.

4-38 SECTION 12. Subsection (a), Section 401.202, Health and
4-39 Safety Code, is amended to read as follows:

4-40 (a) The commission [~~or department, within its respective~~
4-41 ~~jurisdiction,~~] may grant, deny, renew, revoke, suspend, or withdraw
4-42 licenses for the disposal of low-level radioactive waste from other
4-43 persons and for the processing of that waste.

4-44 SECTION 13. Section 401.262, Health and Safety Code, is
4-45 amended to read as follows:

4-46 Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL.
4-47 The commission [~~department~~] has sole and exclusive authority to
4-48 assure that processing and disposal sites are closed and that
4-49 by-product material is managed and disposed of in compliance with:

- 4-50 (1) the federal commission's applicable standards; and
- 4-51 (2) closure criteria the federal commission and the
4-52 United States Environmental Protection Agency have determined are
4-53 protective of human health and safety and the environment.

4-54 SECTION 14. Section 401.2625, Health and Safety Code, is
4-55 amended to read as follows:

4-56 Sec. 401.2625. LICENSING AUTHORITY. The commission
4-57 [~~commissioner~~] has sole and exclusive authority to grant, deny,
4-58 renew, revoke, suspend, amend, or withdraw licenses for source
4-59 material recovery and processing or for storage, processing, or
4-60 disposal of by-product material.

4-61 SECTION 15. Subsections (a) and (c) through (f), Section
4-62 401.263, Health and Safety Code, are amended to read as follows:

4-63 (a) If the commission [~~department~~] is considering the
4-64 issuance, renewal, or amendment of a license to process materials
4-65 that produce by-product materials or a license to dispose of
4-66 by-product material and the commission [~~department~~] determines
4-67 that the licensed activity will have a significant impact on the
4-68 human environment, the commission [~~department~~] shall prepare or
4-69 have prepared a written environmental analysis.

5-1 (c) The commission [~~department~~] shall give notice of the
5-2 analysis as provided by commission [~~board~~] rule and shall make the
5-3 analysis available to the public for written comment not later than
5-4 the 31st day before the date of the hearing on the license.

5-5 (d) After notice is given, the commission [~~department~~]
5-6 shall provide an opportunity for written comments by persons
5-7 affected.

5-8 (e) The analysis shall be included as part of the record of
5-9 the commission's [~~department's~~] proceedings.

5-10 (f) The commission [~~board~~] by rule shall prohibit major
5-11 construction with respect to an activity that is to be licensed
5-12 until the requirements of Subsections (a), (b), (c), and (e) are
5-13 completed.

5-14 SECTION 16. Subsections (a), (c), and (d), Section 401.264,
5-15 Health and Safety Code, are amended to read as follows:

5-16 (a) The commission [~~department~~] on its own motion may or on
5-17 the written request of a person affected shall provide an
5-18 opportunity for a public hearing on an application over which the
5-19 commission [~~department~~] has jurisdiction to determine whether to
5-20 issue, renew, or amend a license to process materials that produce
5-21 by-product materials or a license to dispose of by-product
5-22 materials in the manner provided by Chapter 2001, Government Code,
5-23 and permit appearances with or without counsel and the examination
5-24 and cross-examination of witnesses under oath.

5-25 (c) The commission [~~department~~] shall make a record of the
5-26 proceedings and provide a transcript of the hearing on request of,
5-27 and payment for, the transcript or provision of a sufficient
5-28 deposit to assure payment by any person requesting the transcript.

5-29 (d) The commission [~~department~~] shall provide an
5-30 opportunity to obtain a written determination of action to be
5-31 taken. The determination must be based on evidence presented to the
5-32 commission [~~department~~] and include findings. The written
5-33 determination is available to the public.

5-34 SECTION 17. Section 401.265, Health and Safety Code, is
5-35 amended to read as follows:

5-36 Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL
5-37 LICENSES. The commission [~~department~~] shall prescribe conditions
5-38 in a radioactive substances [~~material~~] license issued, renewed, or
5-39 amended for an activity that results in production of by-product
5-40 material to minimize or, if possible, eliminate the need for
5-41 long-term maintenance and monitoring before the termination of the
5-42 license, including conditions that:

5-43 (1) the license holder will comply with the applicable
5-44 decontamination, decommissioning, reclamation, and disposal
5-45 standards that are prescribed by the commission [~~board~~] and that
5-46 are compatible with the federal commission's standards for sites at
5-47 which those ores were processed and at which the by-product
5-48 material is deposited; and

5-49 (2) the ownership of a disposal site, other than a
5-50 disposal well covered by a permit issued under Chapter 27, Water
5-51 Code, and the by-product material resulting from the licensed
5-52 activity are transferred, subject to Sections 401.266-401.269, to:

- 5-53 (A) the state; or
- 5-54 (B) the federal government if the state declines
5-55 to acquire the site, the by-product material, or both the site and
5-56 the by-product material.

5-57 SECTION 18. Subsection (a), Section 401.266, Health and
5-58 Safety Code, is amended to read as follows:

5-59 (a) The commission [~~board~~] by rule or [~~order or the~~
5-60 ~~department by~~] order may require that before a license covering
5-61 land used for the disposal of by-product material is terminated,
5-62 the land, including any affected interests in the land, must be
5-63 transferred to the federal government or to the state unless:

5-64 (1) the federal commission determines before the
5-65 license terminates that the transfer of title to the land and the
5-66 by-product material is unnecessary to protect the public health,
5-67 safety, or welfare or to minimize danger to life or property; or

5-68 (2) the land is held in trust by the federal government
5-69 for an Indian tribe, is owned by an Indian tribe subject to a

6-1 restriction against alienation imposed by the federal government,
6-2 is owned by the federal government, or is owned by the state.

6-3 SECTION 19. Section 401.267, Health and Safety Code, is
6-4 amended to read as follows:

6-5 Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT
6-6 MATERIALS AND SITES. (a) The commission [~~department~~] may acquire
6-7 by-product material and fee simple title in land, affected mineral
6-8 rights, and buildings at which that by-product material is disposed
6-9 of and abandoned so that the by-product material and property can be
6-10 managed in a manner consistent with protecting public health,
6-11 safety, and the environment.

6-12 (b) The commission [~~department~~] may sell land acquired
6-13 under this section at the land's fair market value after the
6-14 commission [~~department~~] has taken corrective action to restore the
6-15 land to a condition that does not compromise the public health or
6-16 safety or the environment. The General Land Office shall negotiate
6-17 and close a transaction under this subsection on behalf of the
6-18 commission [~~department~~] using procedures under Section 31.158(c),
6-19 Natural Resources Code. Proceeds from the transaction shall be
6-20 deposited in the Texas capital trust fund.

6-21 SECTION 20. Section 401.269, Health and Safety Code, is
6-22 amended to read as follows:

6-23 Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY
6-24 MEASURES. (a) The commission [~~department~~] may undertake
6-25 monitoring, maintenance, and emergency measures in connection with
6-26 by-product material and property for which it has assumed custody
6-27 under Section 401.267 that are necessary to protect the public
6-28 health and safety and the environment.

6-29 (b) The commission [~~department~~] shall maintain the
6-30 by-product material and property transferred to it in a manner that
6-31 will protect the public health and safety and the environment.

6-32 SECTION 21. Subsections (a), (b), (e), and (f), Section
6-33 401.270, Health and Safety Code, are amended to read as follows:

6-34 (a) If the commission [~~department~~] finds that by-product
6-35 material or the operation by which that by-product material is
6-36 derived threatens the public health and safety or the environment,
6-37 the commission [~~department~~] by order may require any action,
6-38 including a corrective measure, that is necessary to correct or
6-39 remove the threat.

6-40 (b) The commission [~~department~~] may issue an emergency
6-41 order to a person responsible for an activity, including a past
6-42 activity, concerning the recovery or processing of source material
6-43 or the disposal of by-product material if it appears that there is
6-44 an actual or threatened release of source material or by-product
6-45 material that presents an imminent and substantial danger to the
6-46 public health and safety or the environment, regardless of whether
6-47 the activity was lawful at the time. The emergency order may be
6-48 issued without notice or hearing.

6-49 (e) The commission [~~department~~] shall use the security
6-50 provided by the license holder to pay the costs of actions that are
6-51 taken or that are to be taken under this section. The commission
6-52 [~~department~~] shall send to the comptroller a copy of its order
6-53 together with necessary written requests authorizing the
6-54 comptroller to:

6-55 (1) enforce security supplied by the licensee;
6-56 (2) convert an amount of security into cash, as
6-57 necessary; and

6-58 (3) disburse from the security in the perpetual care
6-59 account the amount necessary to pay the costs.

6-60 (f) If an order issued by the commission [~~department~~] under
6-61 this section is adopted without notice or hearing, the order shall
6-62 set a time, at least 10 but not more than 30 days following the date
6-63 of issuance of the emergency order, and a place for a hearing to be
6-64 held in accordance with the rules of the commission [~~board~~]. As a
6-65 result of this hearing, the commission [~~department~~] shall decide
6-66 whether to affirm, modify, or set aside the emergency order. All
6-67 provisions of the emergency order shall remain in force and effect
6-68 during the pendency of the hearing, unless otherwise altered by the
6-69 commission [~~department~~].

7-1 SECTION 22. Subchapter G, Chapter 401, Health and Safety
7-2 Code, is amended by adding Sections 401.271 and 401.272 to read as
7-3 follows:

7-4 Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A
7-5 holder of a license issued by the commission under this chapter that
7-6 authorizes the disposal of a radioactive substance from other
7-7 persons shall remit each quarter an amount equal to 10 percent of
7-8 the license holder's gross receipts received from disposal
7-9 operations under a license issued under this chapter that occur
7-10 after the effective date of the Act enacting this section as
7-11 follows:

7-12 (1) five percent shall be remitted to the comptroller
7-13 for deposit to the credit of the general revenue fund; and

7-14 (2) five percent shall be remitted to the host county
7-15 in accordance with Sections 401.244(b) and (d).

7-16 (b) Subsection (a) does not apply to compact waste or
7-17 federal facility waste as defined by Section 401.2005 or industrial
7-18 solid waste as defined by Section 361.003.

7-19 Sec. 401.272. AUDIT AUTHORITY. The commission may audit a
7-20 license holder's financial records and waste manifest information
7-21 to ensure that the fees imposed under this chapter are accurately
7-22 paid. The license holder shall comply with the commission's
7-23 audit-related requests for information.

7-24 SECTION 23. Section 401.301, Health and Safety Code, is
7-25 amended to read as follows:

7-26 Sec. 401.301. LICENSE AND REGISTRATION FEES [~~COLLECTED BY~~
7-27 ~~DEPARTMENT~~]. (a) The commission and department may collect a fee
7-28 for each license and registration the agency [~~it~~] issues.

7-29 (b) The commission and the board each by rule shall set the
7-30 fee in an amount that may not exceed the actual expenses annually
7-31 incurred to:

7-32 (1) process applications for licenses or
7-33 registrations;

7-34 (2) amend or renew licenses or registrations;

7-35 (3) make inspections of license holders and
7-36 registrants; and

7-37 (4) enforce this chapter and rules, orders, licenses,
7-38 and registrations under this chapter.

7-39 (c) The commission and department may collect a fee, in
7-40 addition to the annual license and registration fee, of not less
7-41 than 20 percent of the amount of the annual license and registration
7-42 fee nor more than \$10,000 per annum from each licensee or registrant
7-43 who fails to pay the fees authorized by this section.

7-44 (d) The commission and department may require that each
7-45 person who holds a specific license issued by the agency
7-46 [~~department~~] annually pay to the agency [~~department~~] an additional
7-47 five percent of the appropriate annual fee set under Subsection
7-48 (b). Fees collected under this subsection shall be deposited to the
7-49 credit of the perpetual care account. The fees are not refundable.

7-50 (e) The commission and department shall suspend assessment
7-51 of a fee imposed under Subsection (d) if the amount of fees
7-52 collected under that subsection reaches \$500,000. If the balance
7-53 of fees collected subsequently is reduced to \$350,000 or less, the
7-54 commission and department shall reinstitute assessment of the fee
7-55 until the balance reaches \$500,000.

7-56 (f) The commission may assess and collect additional fees
7-57 from the applicant to recover the costs the commission incurs for
7-58 administrative review, technical review, and hearings on the
7-59 application.

7-60 SECTION 24. Subsection (a), Section 401.302, Health and
7-61 Safety Code, is amended to read as follows:

7-62 (a) The department, in coordination with the commission,
7-63 may set and collect an annual fee from the operator of each nuclear
7-64 reactor or other fixed nuclear facility in the state that uses
7-65 special nuclear material.

7-66 SECTION 25. Subsections (c), (e), (f), and (g), Section
7-67 401.305, Health and Safety Code, are amended to read as follows:

7-68 (c) Money and security in the perpetual care account may be
7-69 administered by the department or commission only for the

8-1 decontamination, decommissioning, stabilization, reclamation,
 8-2 maintenance, surveillance, control, storage, and disposal of
 8-3 radioactive substances [~~material~~] for the protection of the public
 8-4 health and safety and the environment under this chapter and for
 8-5 refunds under Section 401.303.

8-6 (e) The department or commission may use money in the
 8-7 perpetual care account to pay for measures:

8-8 (1) to prevent or mitigate the adverse effects of
 8-9 abandonment of radioactive substances [~~materials~~], default on a
 8-10 lawful obligation, insolvency, or other inability by the holder of
 8-11 a license issued by the department or commission to meet the
 8-12 requirements of this chapter or of department or commission rules;
 8-13 and

8-14 (2) to assure the protection of the public health and
 8-15 safety and the environment from the adverse effects of ionizing
 8-16 radiation.

8-17 (f) The department or commission may provide, by the terms
 8-18 of a contract or lease entered into between the department or
 8-19 commission and any person or by the terms of a license issued by the
 8-20 department or commission to any person, for the decontamination,
 8-21 closure, decommissioning, reclamation, surveillance, or other care
 8-22 of a site or facility subject to department or commission
 8-23 jurisdiction under this chapter as needed to carry out the purpose
 8-24 of this chapter.

8-25 (g) The existence of the perpetual care account does not
 8-26 make the department or commission liable for the costs of
 8-27 decontamination, transfer, transportation, reclamation,
 8-28 surveillance, or disposal of radioactive substances [~~material~~]
 8-29 arising from a license holder's abandonment of radioactive
 8-30 substances [~~material~~], default on a lawful obligation, insolvency,
 8-31 or inability to meet the requirements of this chapter or of
 8-32 department or commission rules.

8-33 SECTION 26. Section 401.343, Health and Safety Code, is
 8-34 amended to read as follows:

8-35 Sec. 401.343. RECOVERY OF SECURITY. (a) The department or
 8-36 commission shall seek reimbursement, either by an order of the
 8-37 department or commission or a suit filed by the attorney general at
 8-38 the [~~department's~~] request of the department or commission, of
 8-39 security from the perpetual care account used by the department or
 8-40 commission to pay for actions, including corrective measures, to
 8-41 remedy spills or contamination by radioactive substances
 8-42 [~~material~~] resulting from a violation of this chapter relating to
 8-43 an activity under the [~~department's~~] jurisdiction of the department
 8-44 or commission or a violation of a rule, license, registration, or
 8-45 order adopted or issued by the department or commission under this
 8-46 chapter.

8-47 (b) On request by the department or commission, the attorney
 8-48 general shall file suit to recover security under this section.

8-49 SECTION 27. The heading to Subchapter K, Chapter 401,
 8-50 Health and Safety Code, is amended to read as follows:

8-51 SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS [~~NATURAL RESOURCE~~
 8-52 ~~CONSERVATION~~] COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD
 8-53 COMMISSION OF TEXAS

8-54 SECTION 28. Subsections (a) and (b), Section 401.412,
 8-55 Health and Safety Code, are amended to read as follows:

8-56 (a) Notwithstanding any other provision of this chapter and
 8-57 subject to Sections 401.102 and 401.415, the commission has sole
 8-58 and exclusive authority to directly regulate and to grant, deny,
 8-59 renew, revoke, suspend, amend, or withdraw licenses for the
 8-60 disposal of radioactive substances. [~~In this subsection,~~
 8-61 ~~"radioactive substance" does not include by-product material as~~
 8-62 ~~defined by Section 401.003(3)(B).]~~

8-63 (b) Notwithstanding any other provision of this chapter,
 8-64 the commission [~~commissioner~~] has the sole and exclusive authority
 8-65 to grant, deny, renew, revoke, suspend, amend, or withdraw licenses
 8-66 for the recovery and processing of source material or disposal of
 8-67 by-product material under Subchapter G.

8-68 SECTION 29. Section 401.413, Health and Safety Code, is
 8-69 amended to read as follows:

9-1 Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A
 9-2 person required by another section of this chapter to obtain a
 9-3 license for the disposal of a radioactive substance is required to
 9-4 obtain the license from the commission and not from the department.
 9-5 ~~[This section does not apply to a person required to obtain a~~
 9-6 ~~license for recovery or processing of source material or for~~
 9-7 ~~recovery, processing, or disposal of by-product material as defined~~
 9-8 ~~by Section 401.003(3)(B).]~~

9-9 SECTION 30. Section 401.414, Health and Safety Code, is
 9-10 amended to read as follows:

9-11 Sec. 401.414. MEMORANDA [MEMORANDUM] OF UNDERSTANDING. The
 9-12 Texas ~~[Natural Resource Conservation]~~ Commission on Environmental
 9-13 Quality, the Health and Human Services Commission, and the Railroad
 9-14 Commission of Texas [and the board of health] by rule shall adopt
 9-15 memoranda [a memorandum] of understanding defining their
 9-16 respective duties under this chapter.

9-17 SECTION 31. Section 361.015, Health and Safety Code, is
 9-18 amended to read as follows:

9-19 Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The
 9-20 commission is the state agency under Chapter 401 that licenses and
 9-21 regulates radioactive waste storage, processing, and disposal
 9-22 activities not preemptively regulated by the federal government.

9-23 (b) Except as provided by Subsection (a), the Health and
 9-24 Human Services Commission, acting through the Department of State
 9-25 Health Services or other department as designated by the executive
 9-26 commissioner of the Health and Human Services Commission, [The
 9-27 Texas Department of Health] is the state agency under Chapter 401
 9-28 that regulates radioactive waste activities~~[, excluding disposal,]~~
 9-29 not preemptively regulated by the federal government.

9-30 SECTION 32. Subchapter D, Chapter 27, Water Code, is
 9-31 amended by adding Section 27.0513 to read as follows:

9-32 Sec. 27.0513. AREA PERMITS AND PRODUCTION AREAS FOR URANIUM
 9-33 MINING. (a) The commission may issue a permit pursuant to Section
 9-34 27.011 that authorizes the construction and operation of two or
 9-35 more similar injection wells within a specified area for mining of
 9-36 uranium. An application for a new permit issued pursuant to Section
 9-37 27.011, a major amendment of such a permit, or a renewal of such a
 9-38 permit for mining of uranium is subject to the public notice
 9-39 requirements and opportunity for contested case hearing provided
 9-40 under Section 27.018.

9-41 (b) For a permit for mining of uranium issued on or after
 9-42 September 1, 2007, pursuant to Section 27.011, the term of the
 9-43 permit to authorize injection for recovery of uranium shall be 10
 9-44 years. The holder of a permit for mining of uranium issued by the
 9-45 commission before September 1, 2007, pursuant to Section 27.011,
 9-46 must submit an application to the commission before September 1,
 9-47 2012, for renewal of the permit to authorize construction and
 9-48 operation of injection wells for mining of uranium. Authority to
 9-49 construct or operate injection wells for recovery of uranium under
 9-50 a permit issued before September 1, 2007, pursuant to Section
 9-51 27.011, expires on September 1, 2012, if an application for renewal
 9-52 of the permit is not submitted to the commission before September 1,
 9-53 2012. Expiration of authority under this subsection does not
 9-54 relieve the permit holder from obligations under the permit or
 9-55 applicable rules, including obligations to restore groundwater and
 9-56 to plug and abandon wells in accordance with the requirements of the
 9-57 permit and applicable rules.

9-58 (c) The commission may issue a holder of a permit issued
 9-59 pursuant to Section 27.011 for mining of uranium an authorization
 9-60 that allows the permit holder to conduct mining and restoration
 9-61 activities in production zones within the boundary established in
 9-62 the permit. The commission by rule shall establish application
 9-63 requirements, technical requirements, including the methods for
 9-64 determining restoration table values, and procedural requirements
 9-65 for any authorization.

9-66 (d) Notwithstanding Sections 5.551, 5.556, 27.011, and
 9-67 27.018, an application for an authorization submitted after
 9-68 September 1, 2007, is an uncontested matter not subject to a
 9-69 contested case hearing or the hearing requirements of Chapter 2001,

Government Code. An application filed by the holder of a permit issued pursuant to Section 27.011 to amend a restoration table value of an authorization is subject to the public notice requirements and opportunity for contested case hearing provided under Section 27.018.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-17 (e) Control of and title to all property and material
 11-18 acquired by this state or an agency of this state under Section
 11-19 401.267, Health and Safety Code, before the effective date of this
 11-20 Act shall be transferred to the Texas Commission on Environmental
 11-21 Quality on this state's behalf as soon as practicable. This
 11-22 subsection does not apply to property or material sold by the state
 11-23 under Subsection (b) of that section before the effective date of
 11-24 this Act.

11-25 (f) The Texas Commission on Environmental Quality shall
 11-26 provide an opportunity for employees of the Health and Human
 11-27 Services Commission or the Department of State Health Services who
 11-28 have performed duties related to a right, power, duty, obligation,
 11-29 responsibility, function, activity, or program transferred by this
 11-30 Act to request a transfer to commission employment. In making
 11-31 employment decisions under this subsection, the Texas Commission on
 11-32 Environmental Quality shall:

11-33 (1) ensure that state and federal requirements are met
 11-34 by commission employees; and

11-35 (2) consider the value of maintaining continuity in
 11-36 the personnel staffing relevant programs.

11-37 (g) The Texas Commission on Environmental Quality, the
 11-38 Health and Human Services Commission, and the Department of State
 11-39 Health Services shall cooperate in preventing any delay that may be
 11-40 caused by or may occur in the transfer of property or personnel or a
 11-41 right, power, duty, obligation, responsibility, function,
 11-42 activity, or program made by this Act.

11-43 (h) To expedite the transfers made by this Act of rights,
 11-44 powers, duties, obligations, functions, activities, property, and
 11-45 programs, and to prevent delays related to any of the rights,
 11-46 powers, duties, obligations, functions, activities, property, or
 11-47 programs, the Texas Commission on Environmental Quality may
 11-48 contract with any person to assist the commission. The commission
 11-49 may assess and collect additional fees from an applicant affected
 11-50 by performance under a contract under this subsection to recover
 11-51 the commission's contracting costs.

11-52 (i) The transfers made by this Act do not affect any matter
 11-53 that is the subject of a court proceeding pending on the effective
 11-54 date of this Act.

11-55 (j) The Texas Commission on Environmental Quality shall
 11-56 continue any applications review or processing and any hearings
 11-57 that concern a matter subject to transfer under Subsection (a) of
 11-58 this section that, on the date of the transfer, is being conducted
 11-59 by the Health and Human Services Commission or the Department of
 11-60 State Health Services or their successor agencies. The agencies
 11-61 shall cooperate and consult with each other to ensure that any delay
 11-62 necessitated by the transfer is minimized to the greatest extent
 11-63 possible. The Texas Commission on Environmental Quality shall
 11-64 utilize progress made on any technical review or environmental
 11-65 analysis conducted by the department prior to the effective date of
 11-66 this Act.

11-67 (k) An application for a new license to dispose of
 11-68 by-product material that is filed with the Department of State
 11-69 Health Services on or before January 1, 2007, and that has not been

12-1 referred to the State Office of Administrative Hearings by the
12-2 department before the effective date of this Act shall be processed
12-3 by the Texas Commission on Environmental Quality following the
12-4 effective date of this Act as follows:

12-5 (1) a license application subject to this subsection
12-6 shall be governed only by the technical rules and regulations of the
12-7 department that are effective on the effective date of this Act;

12-8 (2) the commission shall complete any technical review
12-9 of a license application subject to this subsection and determine
12-10 whether a draft license shall be issued on or before October 1,
12-11 2007. The commission shall utilize progress made on any technical
12-12 review or environmental analysis conducted by the department before
12-13 the effective date of this Act. In order to meet the deadline
12-14 provided by this subdivision, the commission may contract with the
12-15 department or other entities for completion of any portion of the
12-16 technical review that has not been completed upon the effective
12-17 date of this Act. The commission may assess and collect additional
12-18 fees from the applicant to recover costs the commission incurs for
12-19 technical review of a license application subject to this
12-20 subsection;

12-21 (3) the commission shall render a final decision on a
12-22 license application subject to this subsection on or before
12-23 December 31, 2008; and

12-24 (4) a contested case hearing held on a license
12-25 application subject to this subsection that was filed with the
12-26 department on or before January 1, 2007, may not exceed one year in
12-27 duration, measured from the date of referral by the commission of
12-28 the application to the State Office of Administrative Hearings
12-29 until the commission makes a final decision on the application.
12-30 Discovery in such a hearing shall be limited to not more than 60
12-31 days in order to meet this limitation. Notice of hearing shall be
12-32 provided to the applicant, the office of public interest counsel,
12-33 the executive director of the commission, and the person who timely
12-34 requested a contested case hearing by mail at least 10 days in
12-35 advance of the hearing.

12-36 (1) This subsection applies only to an applicant for a
12-37 license subject to Subsection (k) of this section. Notwithstanding
12-38 rules adopted under Subsection (f), Section 401.263, Health and
12-39 Safety Code, as amended by this Act, and to the extent not
12-40 prohibited under federal law, the applicant, at the applicant's own
12-41 risk, may begin major construction related to the activities for
12-42 which the license application was made at the time technical review
12-43 of the application has been made and an environmental analysis is
12-44 prepared under Section 401.263, Health and Safety Code. The Texas
12-45 Commission on Environmental Quality may oversee and govern the
12-46 construction authorized by this subsection in the same manner and
12-47 to the same extent as if the construction were authorized by a
12-48 license issued by the commission, and the construction is subject
12-49 to relevant commission rules as if the construction were authorized
12-50 by a license issued by the commission.

12-51 SECTION 34. (a) This Act does not impair, delay, or affect
12-52 the priority established by law for processing and review of the
12-53 application for a license to dispose of low-level radioactive waste
12-54 that was filed with the Texas Commission on Environmental Quality
12-55 before January 1, 2007.

12-56 (b) The Texas Commission on Environmental Quality shall
12-57 give priority to the processing and review of the license
12-58 application described by Subsection (a) of this section over all
12-59 other applications that pertain to radioactive substances or
12-60 radioactive waste pending before the commission except for those
12-61 applications the executive director of the Texas Commission on
12-62 Environmental Quality determines are necessarily of a higher
12-63 priority to avert or address an emergency concerning the public
12-64 health or safety.

12-65 (c) Subject to the priority given under Subsection (b) of
12-66 this section to the application, the Texas Commission on
12-67 Environmental Quality shall give priority to the review and
12-68 processing of:

12-69 (1) an application for the commercial disposal of

13-1 by-product material;

13-2 (2) an application for termination of a license to
13-3 recover or process source material and dispose of associated
13-4 by-product material generated in this state; and

13-5 (3) a new application for a permit to recover or
13-6 process source material and dispose of associated by-product
13-7 material generated in this state.

13-8 SECTION 35. Notwithstanding other law or any rule on the
13-9 subject of timeliness of an applicant providing information
13-10 pertaining to an application for a license from the Texas
13-11 Commission on Environmental Quality, the applicant for a license
13-12 shall assist the commission in meeting any deadlines imposed by
13-13 Chapter 401, Health and Safety Code, by submitting to the
13-14 commission any information the commission requires regarding the
13-15 application in a prompt and timely manner. The deadlines imposed by
13-16 this Act and by Chapter 401, Health and Safety Code, as amended by
13-17 this Act, are based on the assumptions that the applicant timely
13-18 submits a complete application and that all requirements are met.

13-19 SECTION 36. This Act takes effect immediately if it
13-20 receives a vote of two-thirds of all the members elected to each
13-21 house, as provided by Section 39, Article III, Texas Constitution.
13-22 If this Act does not receive the vote necessary for immediate
13-23 effect, this Act takes effect on the 91st day after the last day of
13-24 the legislative session.

13-25 * * * * *