

BILL ANALYSIS

C.S.H.B. 2184
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas is the host state for the Texas Low-Level Radioactive Waste Disposal Compact, which requires the state to develop a facility for the disposal of low-level radioactive waste generated within the compact's party states. In accordance with the compact and in compliance with state law, the Texas Commission on Environmental Quality issued a license to a private entity to construct and operate a facility for the disposal of low-level radioactive waste for the compact. The compact waste disposal facility is under construction and is expected to be ready by the end of 2011.

The State of Texas owns the compact waste disposal facility and is slated to receive five percent of the gross revenues generated from the disposal of low-level radioactive waste. Vermont, currently the only other party state to the compact, has paid Texas more than \$12 million for the privilege of using the compact waste disposal facility and is obligated to pay another like sum when the facility is operational. The compact allows low-level radioactive waste to be imported for disposal from states that are not members of the compact, but interested parties note that the nonparty states have not paid for the privilege of using Texas' compact waste disposal facility.

Interested parties assert that legislation is required to make certain changes relating to the disposal of low-level radioactive waste under the compact and that, among other provisions, such legislation should impose a surcharge on the disposal of low-level radioactive waste generated in states that are not members of the compact for the privilege of using the facility, to be collected by the facility operator and paid to the state each quarter, and that waste generated in and received from party states should not be subject to this surcharge. The parties note that such legislation should also provide for nonmember states to become parties to the compact upon making a party state contribution and complying with compact membership requirements and should prohibit the disposal of low-level radioactive waste generated outside the United States and its territories into the compact waste disposal facility. C.S.H.B. 2184 seeks to address matters related to these issues by making changes relating to the disposal of low-level radioactive waste under the compact.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 6 and 7 of this bill.

ANALYSIS

C.S.H.B. 2184 amends the Health and Safety Code to authorize the holder of a license for a low-level radioactive waste disposal facility licensed by the Texas Commission on Environmental Quality (TCEQ) to accept for disposal at the compact waste disposal facility nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste to the extent the acceptance does not diminish the disposal volume or curie capacity available to states that are party to the Texas Low-Level Radioactive Waste Disposal Compact. The bill authorizes the compact waste disposal facility license holder to accept for disposal at the compact waste

disposal facility nonparty compact waste that is incidentally commingled with party state compact waste at a commercial processing facility. The bill prohibits the acceptance for disposal of waste of international origin at a compact waste disposal facility.

C.S.H.B. 2184 establishes an allocation of the total initial licensed capacity of the compact waste disposal facility requiring 50 percent of the volume and curie capacity to be reserved for compact waste generated in the host state and 20 percent of the volume and curie capacity to be reserved for compact waste generated in Vermont. The bill makes acceptance of low-level radioactive waste by the compact waste disposal facility subject to these provisions.

C.S.H.B. 2184 requires TCEQ to conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of compact waste generated in party states and to consider and make recommendations regarding the future revised volume and curie capacity needs of party state generators and any additional reserved capacity necessary to meet those needs, the result of using decay factors in revising curie capacity limits in the license, and the necessity of containerization of the waste. The bill requires TCEQ, not later than December 1, 2012, to submit a preliminary report of the results of the study based on available data to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste and to submit a final report to those standing committees not later than December 1, 2014. The bill provides that the commission's executive director shall be authorized, upon completion of the final report, to prohibit the license holder from accepting any additional waste generated in nonparty states if there is a finding in the commission's report that there will be a capacity limitation. The bill authorizes TCEQ to conduct a study at any time after December 1, 2014, if TCEQ determines that a study is necessary.

C.S.H.B. 2184 requires a compact waste disposal facility license holder each quarter to transfer to the state general revenue fund 10 percent of the gross receipts from the disposal at the compact waste disposal facility of nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste.

C.S.H.B. 2184 adds the condition that the fee schedule adopted by rule and periodically revised by TCEQ for compact waste disposal fees be sufficient to reasonably support the commission's oversight of the compact waste disposal facility and the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission and removes the condition that the schedule be based partly on the costs identified under compact provisions relating to waste disposal fee criteria.

C.S.H.B. 2184 requires TCEQ by rule to set maximum disposal rates and establishes that these rates do not apply to generators of nonparty compact waste. The bill requires TCEQ, in establishing the maximum disposal rates for generators in the host state and party states, to assume that nonparty compact waste will be accepted for disposal at the compact waste disposal facility at the maximum disposal rate and prohibits TCEQ from considering the historical operating losses incurred by the compact waste disposal facility license holder before beginning operations.

C.S.H.B. 2184 authorizes recovery by the license holder of historical operating losses incurred by the compact waste disposal facility license holder before beginning operations solely through revenues from the disposal of nonparty compact waste. The bill requires TCEQ to determine the amount of historical operating losses by the compact waste disposal facility license holder that have been incurred before the license holder begins operations at the compact waste disposal facility. The bill limits TCEQ, in determining the amount of historical operating losses, to consideration only of the costs, expenses, and expenditures established as true and accurate by the license holder and requires TCEQ to include the following in that consideration: any cost, expense, or expenditure incurred or paid by the license holder before September 1, 2003, except for costs, expenses, or expenditures associated with real property used for the compact waste disposal facility site; losses relating to the development and operation of any facility other than

the compact waste disposal facility; any other losses or factors that the commission determines are appropriate; and a reasonable rate of return on the items described. The bill prohibits TCEQ from including in its consideration reasonable and necessary expenditures by the license holder for the compact waste disposal facility incurred on or after September 1, 2003, for any asset related to plant, property, equipment, or working capital or permitting or licensing. The bill requires TCEQ, in determining the amount of historical operating losses, to request and the compact waste disposal facility license holder to file in response to the request a proposed amount of historical operating losses based on verifiable financial statements, supporting information, and analysis. The bill requires TCEQ to solicit and consider comments from compact generators regarding the license holder's proposed historical operating losses and to determine the amount of historical operating losses not later than the 90th day after the date the commission receives the proposed amount of the historical operating losses from the license holder.

C.S.H.B. 2184 authorizes the compact waste disposal facility license holder to contract with a generator for the disposal of low-level radioactive waste at the compact waste disposal facility at fees and rates established under the contract and to dispose of waste under the contract at any time before TCEQ's adoption of compact waste disposal fees or maximum disposal rates. The bill establishes that a contract is subject to authorization by the Texas Low-Level Radioactive Waste Compact Commission and exempts compact generators located in the compact states of Texas and Vermont from a requirement to enter into any contract with the compact waste disposal facility license holder before TCEQ's adoption of compact waste disposal fees or maximum disposal rates. The bill establishes that the parties to the contract are not entitled to any refund or surcharge not contained in the contract after the adoption of final disposal fees or final maximum disposal rates, regardless of whether TCEQ approves or disapproves a contract.

C.S.H.B. 2184 authorizes the commission's executive director to set interim disposal fees and interim maximum disposal rates according to TCEQ rules. The bill requires the compact waste disposal facility license holder to charge generators in the host state and party states fees and rates consistent with the interim fees and rates while the interim fees or rates are in effect. The bill establishes that a generator is not entitled to a refund, and is prohibited from being charged a surcharge, for the disposal of waste under interim fees or rates once the final fees or rates have been adopted. The bill authorizes TCEQ, in approving contracts between the compact waste disposal facility license holder and a compact generator, to consider, subject to reasonable rules of confidentiality, the net revenues recovered by the compact waste disposal facility license holder from the disposal of nonparty compact waste after TCEQ adopts compact waste disposal fees and maximum disposal rates.

C.S.H.B. 2184 provides that the host state establishes as terms and conditions for a state to become a party state to the compact after September 1, 2011, a requirement for the state seeking to become a party state to make an initial payment of half of the total amount due to the host state on the later of September 1, 2011, or the date the state becomes a party state and to pay the remainder of the amount owed before the date the facility first accepts waste from the state. The bill requires each state that becomes a party state after September 1, 2011, and before September 1, 2015, to contribute a total of \$40 million to the host state, including the initial payment, and requires each state that becomes a party state on or after September 1, 2015, and before September 1, 2020, to contribute \$60 million to the host state, including the initial payment. The bill establishes that an initial payment is nonrefundable, even if a party state withdraws from the compact. The bill requires a state that has previously withdrawn as a party state and that seeks to become a party state on or after September 1, 2011, to pay the previously committed and withdrawn fee of \$25 million to the host state in addition to the described fees. The bill requires the host county of the compact to receive 10 percent of the payments.

C.S.H.B. 2184 defines "curie capacity," "disposal rate," "maximum disposal rate," "nonparty compact waste," and "waste of international origin."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2184 omits provisions included in the original establishing legislative findings relating to the identification, modification, generation, and enhancement of new and existing state revenue streams from both new and existing programs, processes, and procedures involving the state's policy regarding the disposition of certain low-level radioactive waste.

C.S.H.B. 2184 contains definitions not included in the original for "curie capacity," "disposal rate," and "maximum disposal rate." The substitute contains a provision not included in the original defining "nonparty compact waste" as low-level radioactive waste imported from a state other than a party state, omits a provision included in the original defining "non-regional waste" as low-level radioactive waste not generated in a host state or party state but approved for importation to Texas by the compact commission, and omits a provision included in the original providing that non-regional waste is considered to be compact waste. The substitute differs from the original by referring to "nonparty compact waste" where applicable, whereas the original refers to "non-regional waste."

C.S.H.B. 2184 differs from the original by authorizing the holder of a license for a low-level radioactive waste disposal facility to accept for disposal nonparty compact waste classified as Class A, Class B, or Class C low-level radioactive to the extent the acceptance does not diminish either the disposal volume or curie capacity available to states that are party to the Texas Low-Level Radioactive Waste Disposal Compact, whereas the original entitles a license holder to accept for disposal non-regional waste so classified only to the extent acceptance does not diminish the disposal volume available to party states other than the host state.

C.S.H.B. 2184 contains a provision not included in the original authorizing a compact waste disposal facility license holder to accept for disposal nonparty compact waste that is incidentally commingled with party state compact waste at a commercial processing facility. The substitute differs from the original in a nonsubstantive way by specifically prohibiting the compact waste disposal facility license holder from accepting waste of international origin for disposal at the facility, whereas the original expresses the same prohibition in a passive grammatical construction.

C.S.H.B. 2184 contains provisions not included in the original reserving volume and curie capacity, of the total initial licensed capacity, for the host state and for Vermont in specified percentages and requiring the Texas Commission on Environmental Quality (TCEQ) to conduct a study on the available volume and curie capacity of the facility for the disposal of compact waste generated in party states. The substitute contains a provision not included in the original making acceptance of low-level radioactive waste by the compact waste disposal facility subject to the provisions reserving volume and curie capacity.

C.S.H.B. 2184 differs from the original by requiring a compact waste disposal facility license holder each quarter to transfer to the state general revenue fund 10 percent of the gross receipts from the disposal of nonparty compact waste classified as Class A, Class B, or Class C low-level radioactive waste, whereas the original establishes that the state will receive total general revenue funding in the amount of 10 percent on compact waste accepted for disposal by the compact commission from other states and United States territories not currently parties to the compact commission by requiring a compact waste disposal facility license holder each quarter to transfer to the state general revenue fund five percent of the gross receipts from the disposal of non-regional waste classified as Class A, Class B, or Class C low-level radioactive waste in addition to the five percent fee payable for compact waste and any federal facility waste. The substitute omits a provision included in the original establishing that the additional fee for the

disposal of non-regional Class A, Class B, or Class C low-level radioactive waste does not apply to low-level radioactive waste generated in a host state or a party state.

C.S.H.B. 2184 differs from the original by establishing terms and conditions for a state to become a party state to the compact, whereas the original authorizes a nonparty state to become a member of the compact in accordance with the applicable compact provisions instead of being subject to the additional five percent fee for the disposal of non-regional low-level radioactive waste. The substitute, in provisions setting out the required contribution amounts and deadlines for a state seeking to become a party state, differs from the original in nonsubstantive ways. The substitute omits a provision included in the original establishing that the balance of the party state contribution is payable on final approval by the party state's governing body and before any Class A, Class B, or Class C low-level radioactive waste is accepted for disposal. The substitute contains a provision not included in the original requiring that the host county receive 10 percent of the payments made by a state seeking to become a party state.

C.S.H.B. 2184 omits a provision included in the original establishing that the compact waste disposal fees are in addition to the maximum disposal rates established by TCEQ for the disposal of low-level radioactive waste generated in a host state or party state. The substitute differs from the original by authorizing the compact waste disposal facility license holder, at any time before the commission's adoption of compact waste disposal fees or maximum disposal rates, to contract with a generator for the disposal of low-level radioactive waste at fees and rates established under the contract and authorizing the license holder to dispose of waste under the contract, whereas the original authorizes the license holder, to maximize general revenue for the state, to contract with a willing generator for the disposal of low-level radioactive waste at fees and rates that reflect the mutual agreement of the license holder and generator and to dispose of waste under the contract at any time before the commission's adoption of those fees or maximum disposal rates. The substitute contains provisions not included in the original making such a contract with a generator for the disposal of low-level radioactive waste subject to authorization by the Texas Low-Level Radioactive Waste Disposal Compact Commission and establishing that the parties to a contract are not entitled to any refund or surcharge not contained in the contract.

C.S.H.B. 2184 differs from the original by authorizing the executive director of TCEQ to set interim disposal fees and interim maximum disposal rates according to TCEQ rules, whereas the original grants the executive director interim rate-making authority and authorizes the executive director to establish appropriate interim rate-making to facilitate the implementation of the original's provisions.

C.S.H.B. 2184 contains provisions not included in the original requiring the compact waste disposal facility license holder to charge generators in the host state and party states fees and rates consistent with the interim fees and rates while the interim fees or rates are in effect and establishing that a generator is not entitled to a refund and may not be charged a surcharge for the disposal of waste under interim fees or rates once the final fees or rates have been adopted. The substitute contains a provision not included in the original authorizing TCEQ, in approving a contract, to consider the net revenues recovered by the compact waste disposal facility license holder from the disposal of nonparty compact waste.

C.S.H.B. 2184 differs from the original by authorizing TCEQ by rule to set maximum disposal rates and making such rates inapplicable to generators of nonparty compact waste, whereas the original prohibits the disposal of non-regional waste at the compact waste disposal facility from being subject at any time to maximum disposal rates established by TCEQ. The substitute omits a provision included in the original prohibiting the revenues above the maximum disposal rates from being applied to generators in the host state and party state. The substitute contains provisions not included in the original requiring TCEQ to determine the amount of historical operating losses by the compact waste disposal facility license holder that have been incurred before the license holder begins operations at the compact waste disposal facility and setting out

provisions for such determination.

C.S.H.B. 2184 differs from the original by making the substitute effective September 1, 2011, whereas the original makes the original effective on passage, or, if the original does not receive the necessary vote, September 1, 2011. The substitute differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.