

BILL ANALYSIS

Senate Research Center

S.B. 1504
By: Seliger, Hinojosa
Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1504 seeks to provide legislative guidance regarding the disposal of nonparty compact low-level radioactive waste, or "imported waste," at the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility in Andrews County. This bill prohibits the importation of foreign waste, but allows for domestic imported waste providing that it does not exceed certain thresholds.

S.B. 1504 amends current law relating to the disposal or storage of waste at, or adjacent to, the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Low-Level Radioactive Waste Disposal Compact Commission in SECTION 2 (Section 401.207, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 401.207, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 5 (Section 401.245, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 401.2005, Health and Safety Code, by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (6-a), (8), and (9), to define "compact," "curie capacity," "nonparty compact waste," "party state compact waste," and "waste of international origin," and to redefine "compact waste."

SECTION 2. Amends Section 401.207, Health and Safety Code, as follows:

Sec. 401.207. New heading: OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE. (a) Creates this subsection from existing text. Makes no further changes.

(b) Authorizes the compact waste disposal facility license holder from accepting for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states. Prohibits the license holder from accepting any nonparty compact waste for disposal at the facility until the license has been modified by the Texas Commission on Environmental Quality (TCEQ) to specifically authorize the disposal of nonparty compact waste.

(c) Prohibits the compact waste disposal facility license holder from accepting waste of international origin for disposal at the facility.

(d) Prohibits the compact waste disposal facility license holder from accepting for disposal at the compact waste disposal facility nonparty compact waste that does

not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by TCEQ in the compact waste disposal facility license. Requires TCEQ, before the license holder is authorized to accept nonparty compact waste for disposal, to certify through a written evaluation that the waste is authorized for disposal under the license. Requires TCEQ, if the disposal is not authorized under the license, to inform the license holder of the license amendments necessary to authorize the disposal.

(e) Prohibits the compact waste disposal facility license holder from accepting more than 50,000 total cubic feet of nonparty compact waste annually. Prohibits the compact waste disposal facility license holder from accepting more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies. Authorizes the legislature by general law to establish revised limits after considering the results of the study under Section 401.208.

(e-1) Authorizes TCEQ's executive director (executive director), on completion of the study under Section 401.208, to prohibit the license holder from accepting any additional nonparty compact waste if TCEQ determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) Provides that of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) Requires TCEQ to assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. Provides that the surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(h) Requires a surcharge collected under Subsection (g) to be deposited to the credit of the low-level radioactive waste fund.

(h-1) Requires TCEQ to conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, to issue the results of the review to the legislature. Requires TCEQ to review the operations and expenses of the compact waste disposal facility license holder and to require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. Provides that TCEQ is required to consider the impact of the surcharge on the overall revenue generated for the state and is authorized to request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.

(i) Requires the Texas Low-level Radioactive Waste Disposal Compact Commission by rule to adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) Authorizes an application for the approval of the importation of nonparty compact waste to be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) Requires TCEQ, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, to adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. Provides that the criteria and thresholds for commingling under this subsection established by TCEQ rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 3. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Sections 401.208 and 401.2085, as follows:

Sec. 401.208. STUDY OF CAPACITY. Requires TCEQ to conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(b) Requires TCEQ to consider and make recommendations regarding:

- (1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;
- (2) the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity;
- (3) the necessity of containerization of the waste;
- (4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public; and
- (5) the costs and benefits of volume reduction and stabilized waste forms.

(c) Requires TCEQ, not later than December 1, 2012, to submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) Requires the Texas Low-Level Radioactive Waste Disposal Compact Commission to use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) Authorizes TCEQ to conduct a study described by Subsection (a) at any time after December 1, 2012, if TCEQ determines that a study is necessary.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) Requires TCEQ to conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by TCEQ before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. Requires that the review consider:

- (1) the segregation of financial assurance funds from other funds;
- (2) the degree of risk that the financial instruments are subject to financial reversal;
- (3) potential post-closure risks associated with the compact waste disposal facility; and
- (4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Requires TCEQ, not later than December 1, 2012, to submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

SECTION 4. Amends the heading to Section 401.245, Health and Safety Code, to read as follows:

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

SECTION 5. Amends Section 401.245, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsections (g) and (h), as follows:

(a) Requires a compact waste disposal facility license holder who receives party state compact waste, rather than low-level radioactive waste, for disposal pursuant to the compact, rather than the Texas Low-Level Radioactive Waste Disposal Compact established under Chapter 403 (Texas Low-Level Radioactive Waste Disposal Compact), to have collected a waste disposal fee to be paid by each person who delivers party state compact waste, rather than low-level radioactive waste, to the compact waste disposal facility for disposal.

(b) Requires TCEQ by rule to adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246 (Waste Disposal Fee Criteria).

(g) Authorizes only a party state generator of low-level radioactive waste, for the purposes of a contested case involving the adoption of fees under this section, to be considered a person affected.

(h) Requires the administrative law judge assigned to the contested case involving the adoption of fees under this section to issue a proposal for decision on fees proposed by TCEQ not later than the first anniversary of the date the State Office of Administrative Hearings (SOAH) assumes jurisdiction of the case.

SECTION 6. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Sections 401.2455, and 401.2456, as follows:

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) Authorizes the executive director to establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245. Provides 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 once the final fees have been adopted.

(b) Prohibits an extension of the period during which interim rates apply from being granted. Requires that all disposal at the compact waste disposal facility, if SOAH has not issued a proposal for decision before the expiration of the period under Section 401.245(h), cease until the rates are adopted.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL. (a) Authorizes the compact waste disposal facility license holder, at any time after TCEQ has granted approval to begin operating the compact waste disposal facility, to contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Provides that rates and contract terms negotiated under this section are subject to review and approval by the executive director to ensure they meet all of the requirements of this section.

(c) Requires that rates negotiated under this section be set both by a price per curie and a price per cubic foot. Requires that fees resulting from the negotiated rates be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by TCEQ that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the executive director that are in effect at the time the rates are negotiated.

(d) Requires that a contract under this section be negotiated in good faith, conform to applicable antitrust statutes and regulations, and be nondiscriminatory.

(e) Requires that rates set under this section generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

SECTION 7. Amends Section 401.246, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires that party state compact waste disposal fees, rather than compact waste disposal fees, adopted by TCEQ under Section 401.245 be sufficient to achieve certain purposes.

(c) Requires TCEQ, in determining compact waste disposal fees, to only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. Prohibits TCEQ from considering the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

SECTION 8. Amends Section 401.248(b), Health and Safety Code, to authorize the state to enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact meets certain criteria, including limiting the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of in this state from 1995 through 2045, rather than limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045.

SECTION 9. Amends Section 401.250, Health and Safety Code, as follows:

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Provides that notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 (Text of Compact) is due not later than November 1, 2003. Provides that in accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state is required to make an initial payment of one-half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state is required to pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Provides that each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, is required to contribute a total of \$30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, is required to contribute \$50 million to the host state, including the initial payment under Subsection (a)(1).

(c) Provides that the requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. Requires a state that has withdrawn as a party state to pay the previously committed fee of \$25 million in addition to the fees set in Subsection (b).

(d) Prohibits a payment made under this section from being refunded, even if a party state withdraws from the compact.

(e) Provides that for the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(f) Creates this subsection from existing text. Provides that this section prevails over any other law or agreement in conflict or inconsistent with this section.

SECTION 10. Amends Section 401.271, Health and Safety Code, by adding Subsection (c), as follows:

(c) Requires a holder of a license or permit issued by TCEQ under this chapter or Chapter 361 (Solid Waste Disposal Act) that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons to remit each quarter to TCEQ for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received for management of the substance for any period exceeding one year. Provides that this subsection applies only to the storage of the substance for any period exceeding one year. Provides that this subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

SECTION 11. Repealer: Section 401.248(d) (relating to compacts between other states), Health and Safety Code.

SECTION 12. Effective date: upon passage or September 1, 2011.