

BILL ANALYSIS

C.S.S.B. 1504
By: Seliger
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. Interested parties assert that legislation is required to make certain changes relating to the disposal of low-level radioactive waste under the compact. C.S.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.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Low-Level Radioactive Waste Disposal Compact Commission in SECTION 2 of this bill and the Texas Commission on Environmental Quality in SECTIONS 2 and 7 of this bill.

ANALYSIS

C.S.S.B. 1504 amends the Health and Safety Code to authorize the compact waste disposal facility license holder licensed by the Texas Commission on Environmental Quality (TCEQ) to accept 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. The bill prohibits the compact waste disposal facility license holder from accepting for disposal at the facility waste in the following categories or waste above the following limits:

- waste of international origin
- nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set out by TCEQ in the compact waste disposal facility license
- more than 50,000 total cubic feet of nonparty compact waste annually
- an average of more than 120,000 curies of nonparty compact waste annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies
- a volume of nonparty compact waste that would exceed 30 percent of the total volume and radioactivity established by TCEQ in the compact waste disposal facility license.

C.S.S.B. 1504 entitles Texas to 80 percent of the remaining amount of total capacity and entitles Vermont to the other 20 percent of that remaining capacity.

C.S.S.B. 1504 requires TCEQ to certify through a written evaluation that waste is authorized for disposal under the license before the license holder may accept nonparty compact waste for disposal and to inform the license holder of the license amendments necessary to authorize the disposal if the disposal is not authorized under the license. The bill authorizes the compact waste disposal facility license holder to accept for disposal at the facility nonparty compact waste that is incidentally commingled, as defined by TCEQ rule or policy, with party state compact waste at a commercial processing facility.

C.S.S.B. 1504 authorizes the legislature by general law to establish revised limits after considering the results of a study of capacity conducted by TCEQ under the bill's provisions. The bill authorizes the executive director of TCEQ, on completion of that study, to prohibit the license holder from accepting any additional nonparty compact waste if TCEQ determines from the study that the facility's capacity will be limited, regardless of whether the 30 percent of total volume and radioactivity limit has been reached.

C.S.S.B. 1504 requires TCEQ to assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The bill requires the surcharge to be assessed in addition to the total contracted rate under the bill's provisions and sets the surcharge at 10 percent of that rate before the fifth anniversary of the date disposal operations begin and at 20 percent of that rate on or after the fifth anniversary of the date disposal operations begin. The bill requires the surcharge to be deposited to the credit of the low-level radioactive waste fund.

C.S.S.B. 1504 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. The bill establishes that an application to the Texas Low-Level Radioactive Waste Disposal Compact Commission for the approval of the importation of nonparty compact waste may be submitted only by the generator of the waste, the compact waste disposal facility license holder, or a party contracted by the generator to dispose of the waste.

C.S.S.B. 1504 creates a temporary provision, set to expire August 31, 2013, requiring 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 and to consider and make recommendations regarding the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs, the result of using decay factors in revising curie capacity limits, the necessity of containerization of the waste, and the effects of the projected volume and radioactivity of the waste on the health and safety of the public. The bill requires TCEQ 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 not later than December 1, 2012. The bill 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.

C.S.S.B. 1504 creates a temporary provision, set to expire August 31, 2013, requiring 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. The bill requires the review to consider the segregation of financial assurance funds from other funds, the degree of risk that the financial instruments are subject to financial reversal, potential post-closure risks associated with the compact waste disposal facility, and the adequacy of the financial instruments to cover the state's liabilities. The bill requires TCEQ 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 not later than December 1, 2012.

C.S.S.B. 1504 prohibits the compact waste disposal facility license holder from accepting for disposal at the compact waste disposal facility elemental mercury regulated under the Solid

Waste Disposal Act.

C.S.S.B. 1504 establishes that, for the purposes of a contested case involving the adoption of party state compact waste disposal fees, only a party state generator of low-level radioactive waste may be considered a person affected. The bill requires the administrative law judge assigned to the contested case involving the adoption of compact waste disposal fees to issue a proposal for decision on fees proposed by TCEQ not later than the first anniversary of the date the case is referred by TCEQ.

C.S.S.B. 1504 requires TCEQ by rule to set maximum disposal rates. The bill exempts generators of nonparty compact waste from the maximum disposal rates. 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, in establishing those rates, from considering the historical operating losses incurred by the compact waste disposal facility license holder before beginning operations.

C.S.S.B. 1504 restricts the compact waste disposal facility license holder's recovery of historical operating losses incurred by the license holder before beginning operations to the recovery of those losses 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 authorizes TCEQ, in determining the amount of those historical operating losses, to consider only the costs, expenses, and expenditures established as true and accurate by the license holder and requires TCEQ, in determining those losses, to include the following:

- 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 TCEQ determines are appropriate; and
- a reasonable rate of return on those items.

C.S.S.B. 1504 prohibits TCEQ, in determining the amount of those historical operating losses, from including reasonable and necessary expenditures by the compact waste disposal facility 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 for permitting or licensing. The bill requires TCEQ, in determining the amount of historical operating losses, to request, and the 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 party state compact waste 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 TCEQ receives the proposed amount of the historical operating losses from the license holder.

C.S.S.B. 1504 authorizes the compact waste disposal facility license holder, at any time before the adoption by TCEQ of party state compact waste disposal fees or maximum disposal rates, 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. The bill establishes that such a contract is subject to authorization by the compact commission. The bill establishes that party state compact waste generators located in the compact states of Texas and Vermont are not required to enter into any contract with the compact waste disposal facility license holder before the adoption by TCEQ of party state

compact waste disposal fees or maximum disposal rates. The bill specifies that, after the adoption of final party state compact waste disposal fees or final maximum disposal rates, parties to the contract are not entitled to any refund or surcharge not contained in the contract. The bill requires a contract to be negotiated in good faith, conform to applicable antitrust statutes and regulations, and be nondiscriminatory.

C.S.S.B. 1504 authorizes the executive director of TCEQ to set interim disposal fees and interim maximum disposal rates according to TCEQ rules before TCEQ adopts final disposal fees and final maximum disposal rates. 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 specifies 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.

C.S.S.B. 1504 authorizes TCEQ, in approving contracts between the compact waste disposal facility license holder and a party state compact waste generator after adopting party state compact waste disposal fees and maximum disposal rates, to consider, subject to reasonable rules of confidentiality, the net revenues recovered by the license holder from the disposal of nonparty compact waste.

C.S.S.B. 1504, in a provision establishing as a condition for the state to enter into compacts with another state or several states for the disposal in Texas of low-level radioactive waste that the compact limit the total volume of all low-level radioactive waste to be disposed of in Texas from the other party state or party states, revises that limit from 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in Texas from 1995 through 2045 to 20 percent of the annual average of such waste projected to be disposed of in Texas in that period.

C.S.S.B. 1504 specifies that, in accordance with certain provisions of the compact, the host state establishes as terms and conditions for a state to become a party state to the compact after January 1, 2011, that the state must 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 that the state must pay the remainder of the amount owed 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. The bill requires each state that becomes a party state after January 1, 2011, and before September 1, 2018, to contribute a total of \$30 million to the host state, including the initial payment under the compact, and requires each state that becomes a party state on or after September 1, 2018, and before September 1, 2023, to contribute \$50 million to the host state, including the initial payment under the compact. The bill makes the party state payment requirement applicable 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. The bill 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 the bill's provisions. The bill prohibits a payment from being refunded, even if a party state withdraws from the compact. The bill entitles the host county, as defined by the compact, to receive 10 percent of a payment under the bill's provision.

C.S.S.B. 1504 defines "compact," "curie capacity," "nonparty compact waste," "party state compact waste," and "waste of international origin" and redefines "compact waste."

C.S.S.B. 1504 repeals Section 401.248(d), Health and Safety Code, establishing that if this state enters into a compact with another state and the terms of the compact conflict with statutory provisions setting limitations on low-level radioactive waste disposal, the terms of the compact prevail. The bill makes conforming changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1504 differs from the original by prohibiting the compact waste disposal facility license holder from accepting an average of 120,000 curies of nonparty compact waste annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies, whereas the original sets an annual limit of 120,000 curies of nonparty compact waste.

C.S.S.B. 1504 contains a provision not included in the original entitling the host state and the state of Vermont to 80 percent and 20 percent, respectively, of the remaining amount of total capacity after the allocation of 30 percent of the total volume and radioactivity established by the Texas Commission on Environmental Quality (TCEQ) in the compact waste disposal facility license for the acceptance of nonparty compact waste.

C.S.S.B. 1504 differs from the original by setting the surcharge for the disposal of nonparty compact waste at a compact waste disposal facility at 10 percent of the total contracted rate before the fifth anniversary of the date disposal operations begin and 20 percent of that rate on or after the fifth anniversary of the date disposal operations begin, whereas the original sets the surcharge at 20 percent of the total contracted rate.

C.S.S.B. 1504 differs from the original by authorizing the submission of an application for the approval of the importation of nonparty compact waste to the Texas Low-Level Radioactive Waste Disposal Compact Commission by the compact waste disposal facility license holder or by a party contracted by the generator to dispose of the waste as well as by the generator of the waste, whereas the original limits the submission of such application to the generator of the waste.

C.S.S.B. 1504 contains a provision not included in the original authorizing the compact waste disposal facility license holder to accept for disposal at the facility nonparty compact waste that is incidentally commingled with party state compact waste at a commercial processing facility.

C.S.S.B. 1504 differs from the original, in a provision requiring TCEQ to conduct a study of volume and curie capacity of the compact waste disposal facility, by requiring TCEQ to consider and make recommendations regarding, among other factors, the result of using decay factors in revising curie capacity limits, whereas the original does not include that issue among the issues that TCEQ is required to consider and on which TCEQ is required to make recommendations. The substitute contains a provision not included in the original providing for the expiration of the statutory requirement for such a study on August 31, 2013.

C.S.S.B. 1504 contains a temporary provision not included in the original, set to expire August 31, 2013, requiring 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.

C.S.S.B. 1504 contains a provision not included in the original prohibiting the compact waste disposal facility license holder from accepting for disposal at the facility elemental mercury regulated under the Solid Waste Disposal Act.

C.S.S.B. 1504 contains provisions not included in the original relating to the setting of maximum disposal rates by TCEQ, recovery of historical operating losses incurred by the compact waste disposal facility license holder before beginning operations, and TCEQ consideration of net revenues recovered from the disposal of nonparty compact waste in approval of a contract between the license holder and a party state compact waste generator.

C.S.S.B. 1504 differs from the original by authorizing the license holder, at any time before the adoption by TCEQ of party state compact waste disposal fees or maximum disposal rates, 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, setting provisions for such contract, whereas the original authorizes the 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 and sets out provisions for rates and fees under such contract.

C.S.S.B. 1504 differs from the original by authorizing the TCEQ executive director to set interim disposal fees and interim maximum disposal rates according to TCEQ rules before TCEQ adopts final disposal fees and maximum disposal rates, whereas the original authorizes the executive director to set 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.

C.S.S.B. 1504 contains a provision not included in the original requiring the license holder to charge 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 omits a provision included in the original prohibiting an extension of the period during which interim rates apply and requiring all disposal at the facility to cease until the fees are adopted if TCEQ has not adopted and implemented fees before the expiration of the specified period.

C.S.S.B. 1504 omits provisions included in the original relating to contracts for nonparty waste disposal.

C.S.S.B. 1504 contains a provision not included in the original entitling a host county, as defined by the compact, to receive 10 percent of a payment from each state that becomes a party state.

C.S.S.B. 1504 omits a provision included in the original requiring a holder of a license or permit that authorizes the management, other than disposal, of radioactive waste or elemental mercury for other persons to remit each quarter to TCEQ for deposit into the general revenue fund a percentage of the license or permit holder's gross receipts for such management for any period exceeding one year.