

By: Lewis

H.B. No. 2184

Substitute the following for H.B. No. 2184:

By: Cook

C.S.H.B. No. 2184

A BILL TO BE ENTITLED

AN ACT

relating to the disposal of low-level radioactive waste under the Texas Low-Level Radioactive Waste Disposal Compact.

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

SECTION 1. Section 401.2005, Health and Safety Code, is amended by adding Subdivisions (2-a), (3-a), (6-a), (6-b), and (8) to read as follows:

(2-a) "Curie capacity" means the amount of the radioactivity of the waste accepted by the compact waste disposal facility.

(3-a) "Disposal rate" is the total amount that the compact waste disposal facility license holder charges a generator of low-level radioactive waste for the disposal of that waste.

(6-a) "Maximum disposal rate" is the maximum amount set by the commission that a compact waste disposal facility license holder may charge for the disposal of compact waste generated by a party state.

(6-b) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized by Section 3.05(6) of the compact under Section 403.006.

(8) "Waste of international origin" means low-level radioactive waste that originates outside the United States or a territory of the United States.

SECTION 2. Section 401.207, Health and Safety Code, is

amended to read as follows:

Sec. 401.207. OUT-OF-STATE WASTE. (a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may 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 party states.

(c) The compact waste disposal facility license holder may 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.

(d) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

SECTION 3. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.2075 and 401.208 to read as follows:

1 Sec. 401.2075. CAPACITY LIMITATIONS. Of the total initial
2 licensed capacity of the compact waste disposal facility:

3 (1) 50 percent of the volume and curie capacity shall
4 be reserved for compact waste generated in the host state; and

5 (2) 20 percent of the volume and curie capacity shall
6 be reserved for compact waste generated in Vermont.

7 Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall
8 conduct a study on the available volume and curie capacity of the
9 compact waste disposal facility for the disposal of compact waste
10 generated in party states.

11 (b) The commission shall consider and make recommendations
12 regarding:

13 (1) the future revised volume and curie capacity needs
14 of party state generators and any additional reserved capacity
15 necessary to meet those needs;

16 (2) the result of using decay factors in revising
17 curie capacity limits in the license; and

18 (3) the necessity of containerization of the waste.

19 (c) Not later than December 1, 2012, the commission shall
20 submit a preliminary report of the results of the study based on
21 available data to the standing committees of the senate and the
22 house of representatives with jurisdiction over the disposal of
23 low-level radioactive waste.

24 (d) Not later than December 1, 2014, the commission shall
25 submit a final report of the results of the study to the standing
26 committees of the senate and the house of representatives with
27 jurisdiction over the disposal of low-level radioactive waste. The

1 commission's executive director, upon completion of the final
2 report referenced in this subsection, shall be authorized to
3 prohibit the license holder from accepting any additional waste
4 generated in nonparty states if there is a finding in the
5 commission's report that there will be a capacity limitation.

6 (e) The commission may conduct a study described by
7 Subsection (a) at any time after December 1, 2014, if the commission
8 determines that a study is necessary.

9 SECTION 4. Section 401.215, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE.
12 Subject to limitations provided by Sections 401.207, 401.2075, and
13 401.248, the compact waste disposal facility shall accept for
14 disposal all compact waste that is presented to it and that is
15 properly processed and packaged.

16 SECTION 5. Section 401.2445, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 401.2445. STATE FEE. The compact waste disposal
19 facility license holder each quarter shall transfer to the state
20 general revenue fund:

21 (1) five percent of the gross receipts from:

22 (A) [~~1~~] compact waste received at the compact
23 waste disposal facility; and

24 (B) [~~2~~] any federal facility waste received at
25 a federal facility waste disposal facility licensed under Section
26 401.216; and

27 (2) 10 percent of the gross receipts from the disposal

1 at the compact waste disposal facility of nonparty compact waste
2 that is classified as Class A, Class B, or Class C low-level
3 radioactive waste.

4 SECTION 6. Section 401.245(b), Health and Safety Code, is
5 amended to read as follows:

6 (b) The commission by rule shall adopt and periodically
7 revise compact waste disposal fees according to a schedule that is:

8 (1) based on:

9 (A) the projected annual volume of low-level
10 radioactive waste received; and

11 (B) [7] the relative hazard presented by each
12 type of low-level radioactive waste received; [that is generated by
13 the users of radioactive materials,] and

14 (2) sufficient to reasonably support the commission's
15 oversight of the compact waste disposal facility and the activities
16 of the Texas Low-Level Radioactive Waste Disposal Compact
17 Commission [the costs identified in Section 401.246].

18 SECTION 7. Subchapter F, Chapter 401, Health and Safety
19 Code, is amended by adding Sections 401.2455, 401.2456, 401.2457,
20 and 401.2458 to read as follows:

21 Sec. 401.2455. MAXIMUM DISPOSAL RATES. (a) The commission
22 by rule shall set maximum disposal rates.

23 (b) Maximum disposal rates do not apply to generators of
24 nonparty compact waste.

25 (c) In establishing the maximum disposal rates for
26 generators in the host state and party states, the commission:

27 (1) shall assume that nonparty compact waste will be

1 accepted for disposal at the compact waste disposal facility at the
2 maximum disposal rate; and

3 (2) may not consider the historical operating losses
4 incurred by the compact waste disposal facility license holder
5 before beginning operations.

6 (d) Historical operating losses incurred by the compact
7 waste disposal facility license holder before beginning operations
8 may be recovered by the license holder solely through revenues from
9 the disposal of nonparty compact waste.

10 (e) The commission shall determine the amount of historical
11 operating losses by the compact waste disposal facility license
12 holder that have been incurred before the license holder begins
13 operations at the compact waste disposal facility. In determining
14 the amount of historical operating losses, the commission:

15 (1) may only consider the costs, expenses, and
16 expenditures established as true and accurate by the license
17 holder;

18 (2) shall include:

19 (A) any cost, expense, or expenditure incurred or
20 paid by the license holder before September 1, 2003, except for
21 costs, expenses, or expenditures associated with real property used
22 for the compact waste disposal facility site;

23 (B) losses relating to the development and
24 operation of any facility other than the compact waste disposal
25 facility;

26 (C) any other losses or factors that the
27 commission determines are appropriate; and

1 (D) a reasonable rate of return on the items
2 described by Paragraphs (A), (B), and (C); and

3 (3) may not include reasonable and necessary
4 expenditures by the license holder for the compact waste disposal
5 facility incurred on or after September 1, 2003, for:

6 (A) any asset related to plant, property,
7 equipment, or working capital; or

8 (B) permitting or licensing.

9 (f) In determining the amount of historical operating
10 losses under Subsection (e), the commission shall request and the
11 compact waste disposal facility license holder shall file in
12 response to the request a proposed amount of historical operating
13 losses based on verifiable financial statements, supporting
14 information, and analysis. The commission shall solicit and
15 consider comments from compact generators regarding the license
16 holder's proposed historical operating losses, and shall determine
17 the amount of historical operating losses not later than the 90th
18 day after the date the commission receives the proposed amount of
19 the historical operating losses from the license holder.

20 Sec. 401.2456. CONTRACTS FOR WASTE DISPOSAL. (a) At any
21 time before the adoption by the commission of compact waste
22 disposal fees or maximum disposal rates, the compact waste disposal
23 facility license holder may contract with a generator for the
24 disposal of low-level radioactive waste at the compact waste
25 disposal facility at fees and rates established under the contract
26 and may dispose of waste under the contract. A contract under this
27 subsection is subject to authorization by the compact commission

1 under Section 3.05(6) of the compact under Section 403.006.

2 (b) Compact generators located in the compact states of
3 Texas and Vermont are not required to enter into any contract with
4 the compact waste disposal facility license holder before the
5 adoption by the commission of compact waste disposal fees or
6 maximum disposal rates.

7 (c) Regardless of whether the commission approves or
8 disapproves a contract authorized under this section, after the
9 adoption of final disposal fees under Section 401.245 or final
10 maximum disposal rates under Section 401.2455, the parties to the
11 contract are not entitled to any refund or surcharge not contained
12 in the contract.

13 Sec. 401.2457. INTERIM FEES AND RATES. (a) The
14 commission's executive director may set interim disposal fees and
15 interim maximum disposal rates according to commission rules.

16 (b) The compact waste disposal facility license holder
17 shall charge generators in the host state and party states fees and
18 rates consistent with the interim fees and rates while the interim
19 fees or rates are in effect. A generator is not entitled to a
20 refund, and may not be charged a surcharge, for the disposal of
21 waste under interim fees or rates once the final fees or rates have
22 been adopted.

23 Sec. 401.2458. CONSIDERATIONS IN CONTRACT APPROVAL. After
24 the commission adopts compact waste disposal fees under Section
25 401.245 and maximum disposal rates under Section 401.2455, in
26 approving contracts between the compact waste disposal facility
27 license holder and a compact generator, the commission may

1 consider, subject to reasonable rules of confidentiality, the net
2 revenues recovered by the compact waste disposal facility license
3 holder from the disposal of nonparty compact waste.

4 SECTION 8. Section 401.250, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 401.250. PAYMENTS BY PARTY STATES. (a)
7 Notwithstanding any other provision of law, Act of the legislature
8 or the executive branch, or any other agreement, the initial
9 payment of \$12.5 million due from each nonhost party state under
10 Section 5.01 of the compact established under Section 403.006 is
11 due not later than November 1, 2003. In accordance with Section
12 7.01 of the compact under Section 403.006, the host state
13 establishes the following terms and conditions for a state to
14 become a party state to the compact after September 1, 2011:

15 (1) the state seeking to become a party state must make
16 an initial payment of half of the total amount due to the host state
17 under Subsection (b) of this section on the later of September 1,
18 2011, or the date the state becomes a party state; and

19 (2) the state seeking to become a party state must pay
20 the remainder of the amount owed under Subsection (b) before the
21 date the facility first accepts waste from the state.

22 (b) Each state that becomes a party state:

23 (1) after September 1, 2011, and before September 1,
24 2015, shall contribute a total of \$40 million to the host state,
25 including the initial payment under Subsection (a)(1); and

26 (2) on or after September 1, 2015, and before
27 September 1, 2020, shall contribute \$60 million to the host state,

1 including the initial payment under Subsection (a)(1).

2 (c) A payment made under Subsection (a)(1) may not be
3 refunded, even if a party state withdraws from the compact.

4 (d) In addition to the fees described by Subsection (b), a
5 state that has previously withdrawn as a party state and that seeks
6 to become a party state on or after September 1, 2011, must pay the
7 previously committed and withdrawn fee of \$25 million to the host
8 state.

9 (e) The host county, as defined by Section 2.01 of the
10 compact under Section 403.006, shall receive 10 percent of the
11 payments made under this section.

12 (f) This section prevails over any other law or agreement in
13 conflict or inconsistent with this section.

14 SECTION 9. This Act takes effect September 1, 2011.