

By: Seliger, Hinojosa

S.B. No. 1504

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the disposal of low-level radioactive waste at the
3 Texas Low-Level Radioactive Waste Disposal Compact waste disposal
4 facility.

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

6 SECTION 1. Section 401.2005, Health and Safety Code, is
7 amended by amending Subdivision (1) and adding Subdivisions (1-a),
8 (1-b), (6-a), (8), and (9) to read as follows:

9 (1) "Compact" means the Texas Low-Level Radioactive
10 Waste Disposal Compact established under Section 403.006.

11 (1-a) "Compact waste" means low-level radioactive
12 waste that:

13 (A) is originally generated onsite in a host
14 state or a party state; or

15 (B) is not generated in a host state or a party
16 state but has been approved for importation to this state by the
17 compact commission under Section 3.05 of the compact [~~established~~
18 ~~under Section 403.006~~].

19 (1-b) "Curie capacity" means the amount of the
20 radioactivity of the waste that may be accepted by the compact waste
21 disposal facility as determined by the commission in the compact
22 waste disposal facility license.

23 (6-a) "Nonparty compact waste" means low-level
24 radioactive waste imported from a state other than a party state as

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

2 (8) "Party state compact waste" means low-level
3 radioactive waste generated in a party state.

4 (9) "Waste of international origin" means low-level
5 radioactive waste that originates outside of the United States or a
6 territory of the United States, including waste subsequently stored
7 or processed in the United States.

8 SECTION 2. Section 401.207, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

11 (a) The compact waste disposal facility license holder may not
12 accept low-level radioactive waste generated in another state for
13 disposal under a license issued by the commission unless the waste
14 is:

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

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

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

21 (b) The compact waste disposal facility license holder may
22 accept for disposal at the compact waste disposal facility approved
23 nonparty compact waste that is classified as Class A, Class B, or
24 Class C low-level radioactive waste in accordance with the compact
25 waste disposal facility license to the extent the acceptance does
26 not diminish the disposal volume or curie capacity available to
27 party states.

1 (c) The compact waste disposal facility license holder may
2 not accept waste of international origin for disposal at the
3 facility.

4 (d) The compact waste disposal facility license holder may
5 not accept for disposal at the compact waste disposal facility
6 nonparty compact waste that does not meet the waste characteristics
7 and waste forms for disposal applicable to compact waste as set
8 forth by the commission in the compact waste disposal facility
9 license. Before the license holder may accept nonparty compact
10 waste for disposal, the commission must certify through a written
11 evaluation that the waste is authorized for disposal under the
12 license. If the disposal is not authorized under the license, the
13 commission must inform the license holder of the license amendments
14 necessary to authorize the disposal.

15 (e) The compact waste disposal facility license holder may
16 not accept more than 50,000 total cubic feet of nonparty compact
17 waste annually. The compact waste disposal facility license holder
18 may not accept more than 120,000 curies of nonparty compact waste
19 annually. The legislature by general law may establish revised
20 limits after considering the results of the study under Section
21 401.208.

22 (e-1) The commission's executive director, on completion of
23 the study under Section 401.208, may prohibit the license holder
24 from accepting any additional nonparty compact waste if the
25 commission determines from the study that the capacity of the
26 facility will be limited, regardless of whether the limit under
27 Subsection (f) has been reached.

1 (f) The compact waste disposal facility license holder may
2 not accept a volume of nonparty compact waste that would exceed 30
3 percent of the total volume and radioactivity established for the
4 facility by the commission in the compact waste disposal facility
5 license.

6 (g) The commission shall assess a surcharge for the disposal
7 of nonparty compact waste at the compact waste disposal facility.
8 The surcharge is 20 percent of the total contracted rate under
9 Section 401.2456 and must be assessed in addition to the total
10 contracted rate under that section.

11 (h) A surcharge collected under Subsection (g) shall be
12 deposited to the credit of the low-level radioactive waste fund.

13 (i) The Texas Low-Level Radioactive Waste Disposal Compact
14 Commission by rule shall adopt procedures and forms for the
15 approval of the importation of nonparty compact waste.

16 (j) An application for the approval of the importation of
17 nonparty compact waste may be submitted to the Texas Low-Level
18 Radioactive Waste Disposal Compact Commission only by the generator
19 of the waste.

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

22 Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall
23 conduct a study on the available volume and curie capacity of the
24 compact waste disposal facility for the disposal of party state
25 compact waste and nonparty compact waste.

26 (b) The commission shall consider and make recommendations
27 regarding:

1 (1) the future volume and curie capacity needs of
2 party state and nonparty state generators and any additional
3 reserved capacity necessary to meet those needs;

4 (2) the necessity of containerization of the waste;
5 and

6 (3) the effects of the projected volume and
7 radioactivity of the waste on the health and safety of the public.

8 (c) Not later than December 1, 2012, the commission shall
9 submit a final report of the results of the study to the standing
10 committees of the senate and the house of representatives with
11 jurisdiction over the disposal of low-level radioactive waste.

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

15 SECTION 4. The heading to Section 401.245, Health and
16 Safety Code, is amended to read as follows:

17 Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

18 SECTION 5. Section 401.245, Health and Safety Code, is
19 amended by amending Subsections (a) and (b) and adding Subsections
20 (g) and (h) to read as follows:

21 (a) A compact waste disposal facility license holder who
22 receives party state compact [~~low-level radioactive~~] waste for
23 disposal pursuant to the compact [~~Texas Low-Level Radioactive Waste~~
24 ~~Disposal Compact established under Chapter 403~~] shall have
25 collected a waste disposal fee to be paid by each person who
26 delivers party state compact [~~low-level radioactive~~] waste to the
27 compact waste disposal facility for disposal.

1 (b) The commission by rule shall adopt and periodically
2 revise party state compact waste disposal fees under this section
3 according to a schedule that is based on the projected annual volume
4 of low-level radioactive waste received, the relative hazard
5 presented by each type of low-level radioactive waste that is
6 generated by the users of radioactive materials, and the costs
7 identified in Section 401.246.

8 (g) For the purposes of a contested case involving the
9 adoption of fees under this section, only a party state generator of
10 low-level radioactive waste may be considered a person affected.

11 (h) The administrative law judge assigned to the contested
12 case involving the adoption of fees under this section shall issue a
13 proposal for decision on fees proposed by the commission not later
14 than the first anniversary of the date the case is referred by the
15 commission.

16 SECTION 6. Subchapter F, Chapter 401, Health and Safety
17 Code, is amended by adding Sections 401.2455 and 401.2456 to read as
18 follows:

19 Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL
20 FEES. (a) The executive director may establish interim party
21 state compact waste disposal fees effective only for the period
22 beginning on the date the compact waste disposal facility license
23 holder is approved to accept waste at the disposal facility and
24 ending on the effective date of the rules establishing the fees
25 under Section 401.245.

26 (b) An extension of the period during which interim rates
27 apply may not be granted. If the commission has not adopted and

1 implemented fees under Section 401.245 before the expiration of the
2 period under Subsection (a), all disposal at the compact waste
3 disposal facility must cease until the fees are adopted.

4 Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE
5 DISPOSAL. (a) Except as provided by Subsection (d), at any time
6 after the commission has granted approval to begin operating the
7 compact waste disposal facility, the compact waste disposal
8 facility license holder may contract rates with nonparty compact
9 waste generators for the disposal of nonparty compact waste at the
10 facility in accordance with the compact waste disposal facility
11 license.

12 (b) Rates set under this section are subject to review and
13 approval by the executive director.

14 (c) Rates negotiated under this section must be set both by
15 a price per curie and a price per cubic foot. Fees resulting from
16 the negotiated rates must be greater than:

17 (1) the compact waste disposal fees under Section
18 401.245 as set by the commission; and

19 (2) the interim compact waste disposal fees under
20 Section 401.2455 as set by the executive director.

21 (d) If the commission has not adopted and implemented fees
22 under Section 401.245 before the date specified by Section
23 401.2455(a), all contracts negotiated under this section are void
24 and disposal at the compact waste facility must cease until the
25 rules have been adopted and implemented.

26 (e) A contract under this section must:

27 (1) be negotiated in good faith;

1 (2) conform to applicable antitrust statutes and
2 regulations; and

3 (3) be nondiscriminatory.

4 (f) Rates set under this section must generate fees
5 sufficient to meet the criteria for party state compact waste under
6 Section 401.246(a).

7 SECTION 7. Subsection (a), Section 401.246, Health and
8 Safety Code, is amended to read as follows:

9 (a) Party state compact [~~Compact~~] waste disposal fees
10 adopted by the commission under Section 401.245 must be sufficient
11 to:

12 (1) allow the compact waste facility license holder to
13 recover costs of operating and maintaining the compact waste
14 disposal facility and a reasonable profit on the operation of that
15 facility;

16 (2) provide an amount necessary to meet future costs
17 of decommissioning, closing, and postclosure maintenance and
18 surveillance of the compact waste disposal facility and the compact
19 waste disposal facility portion of the disposal facility site;

20 (3) provide an amount to fund local public projects
21 under Section 401.244;

22 (4) provide a reasonable rate of return on capital
23 investment in the facilities used for management or disposal of
24 compact waste at the compact waste disposal facility; and

25 (5) provide an amount necessary to pay compact waste
26 disposal facility licensing fees, to pay compact waste disposal
27 facility fees set by rule or statute, and to provide security for

1 the compact waste disposal facility as required by the commission
2 under law and commission rules.

3 SECTION 8. Subsection (b), Section 401.248, Health and
4 Safety Code, is amended to read as follows:

5 (b) The state may enter into compacts with another state or
6 several states for the disposal in this state of low-level
7 radioactive waste only if the compact:

8 (1) limits the total volume of all low-level
9 radioactive waste to be disposed of in this state from the other
10 party state or party states to 20 percent of the annual average of
11 low-level radioactive waste projected to be disposed of [~~that the~~
12 ~~governor projects will be produced~~] in this state from [~~the years~~
13 1995 through 2045;

14 (2) gives this state full administrative control over
15 management and operation of the compact waste disposal facility;

16 (3) requires the other state or states to join this
17 state in any legal action necessary to prevent states that are not
18 members of the compact from disposing of low-level radioactive
19 waste at the compact waste disposal facility;

20 (4) allows this state to charge a fee for the disposal
21 of low-level radioactive waste at the compact waste disposal
22 facility;

23 (5) requires the other state or states to join in any
24 legal action involving liability from the compact waste disposal
25 facility;

26 (6) requires the other state or states to share the
27 full cost of constructing the compact waste disposal facility;

1 (7) allows this state to regulate, in accordance with
2 federal law, the means and routes of transportation of the
3 low-level radioactive waste in this state;

4 (8) requires the other state or states to pay for
5 community assistance projects selected by the host county in an
6 amount not less than \$1 million or 10 percent of the amount
7 contributed by the other state or states;

8 (9) is agreed to by the Texas Legislature, the
9 legislature of the other state or states, and the United States
10 Congress; and

11 (10) complies with all applicable federal law.

12 SECTION 9. Section 401.250, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 401.250. PAYMENTS BY PARTY STATES.

15 (a) Notwithstanding any other provision of law, Act of the
16 legislature or the executive branch, or any other agreement, the
17 initial payment of \$12.5 million due from each nonhost party state
18 under Section 5.01 of the compact established under Section 403.006
19 is due not later than November 1, 2003. In accordance with Section
20 7.01 of the compact, the host state establishes the following terms
21 and conditions for a state to become a party state to the compact
22 after January 1, 2011:

23 (1) the state must make an initial payment of half of
24 the total amount due to the host state under Subsection (b) on the
25 later of September 1, 2011, or the date the state becomes a party
26 state; and

27 (2) the state must pay the remainder of the amount owed

1 under Subsection (b) on the later of the date of the opening of the
2 compact waste disposal facility or the date the facility first
3 accepts waste from the state.

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

5 (1) after January 1, 2011, and before September 1,
6 2018, shall contribute a total of \$30 million to the host state,
7 including the initial payment under Subsection (a)(1); and

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

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

16 (d) A payment made under this section may not be refunded,
17 even if a party state withdraws from the compact.

18 (e) This section prevails over any other law or agreement in
19 conflict or inconsistent with this section.

20 SECTION 10. Section 401.271, Health and Safety Code, is
21 amended by adding Subsection (c) to read as follows:

22 (c) A holder of a license or permit issued by the commission
23 under this chapter or Chapter 361 that authorizes the management,
24 other than disposal, of radioactive waste or elemental mercury for
25 other persons shall remit each quarter to the commission for
26 deposit into the general revenue fund an amount equal to 20 percent
27 of the license or permit holder's gross receipts received for

1 management of the waste or mercury for any period exceeding one
2 year. This subsection applies only to the management of
3 radioactive waste or elemental mercury at the compact waste
4 disposal facility.

5 SECTION 11. Subsection (d), Section 401.248, Health and
6 Safety Code, is repealed.

7 SECTION 12. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2011.