

AN ACT

relating to the disposal or storage of waste at, or adjacent to, the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

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

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

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

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

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

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

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

(6-a) "Nonparty compact waste" means low-level 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. The license holder may not accept any nonparty

1 compact waste for disposal at the facility until the license has
2 been modified by the commission to specifically authorize the
3 disposal of nonparty compact waste.

4 (c) The compact waste disposal facility license holder may
5 not accept waste of international origin for disposal at the
6 facility.

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

18 (e) The compact waste disposal facility license holder may
19 not accept more than 50,000 total cubic feet of nonparty compact
20 waste annually. The compact waste disposal facility license holder
21 may not accept more than 120,000 curies of nonparty compact waste
22 annually, except that in the first year the license holder may
23 accept 220,000 curies. The legislature by general law may
24 establish revised limits after considering the results of the study
25 under Section 401.208.

26 (e-1) The commission's executive director, on completion of
27 the study under Section 401.208, may prohibit the license holder

1 from accepting any additional nonparty compact waste if the
2 commission determines from the study that the capacity of the
3 facility will be limited, regardless of whether the limit under
4 Subsection (f) has been reached.

5 (f) Of the total initial licensed capacity of the compact
6 waste disposal facility:

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

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

13 (g) The commission shall assess a surcharge for the disposal
14 of nonparty compact waste at the compact waste disposal facility.
15 The surcharge is 20 percent of the total contracted rate under
16 Section 401.2456 and must be assessed in addition to the total
17 contracted rate under that section.

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

20 (h-1) The commission shall conduct a study of the surcharge
21 described by Subsection (g) and, not later than December 1, 2016,
22 shall issue the results of the review to the legislature. The
23 commission shall review the operations and expenses of the compact
24 waste disposal facility license holder and shall require the
25 compact waste disposal facility license holder to provide
26 justification of disposal expenses and historical costs associated
27 with the facility through appropriate evidentiary and empirical

1 records, studies, and other applicable methodologies. The
2 commission shall consider the impact of the surcharge on the
3 overall revenue generated for the state and may request the
4 assistance of the comptroller in conducting the analysis of the
5 impact of the surcharge.

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

9 (j) An application for the approval of the importation of
10 nonparty compact waste may be submitted to the Texas Low-Level
11 Radioactive Waste Disposal Compact Commission only by the generator
12 of the waste.

13 (k) The commission, in coordination with the Texas
14 Low-Level Radioactive Waste Disposal Compact Commission, shall
15 adopt rules establishing criteria and thresholds by which
16 incidental commingling of party state compact waste and waste from
17 other sources at a commercial processing facility is considered and
18 reasonably limited. The criteria and thresholds for commingling
19 under this subsection established by commission rule are binding on
20 any criteria and thresholds that may be established by the Texas
21 Low-Level Radioactive Waste Disposal Compact Commission.

22 SECTION 3. Subchapter F, Chapter 401, Health and Safety
23 Code, is amended by adding Sections 401.208 and 401.2085 to read as
24 follows:

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

1 compact waste and nonparty compact waste.

2 (b) The commission shall consider and make recommendations
3 regarding:

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

7 (2) the calculation of radioactive decay related to
8 the compact waste disposal facility and radiation dose assessments
9 based on the curie capacity;

10 (3) the necessity of containerization of the waste;

11 (4) the effects of the projected volume and
12 radioactivity of the waste on the health and safety of the public;
13 and

14 (5) the costs and benefits of volume reduction and
15 stabilized waste forms.

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

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

23 (e) The commission may conduct a study described by
24 Subsection (a) at any time after December 1, 2012, if the commission
25 determines that a study is necessary.

26 Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The
27 commission shall conduct a review of the adequacy of the financial

1 assurance mechanisms of the compact waste disposal facility license
2 holder that were approved by the commission before January 1, 2011,
3 against projected post-closure costs, including a review of the
4 adequacy of funds for unplanned events. The review shall consider:

5 (1) the segregation of financial assurance funds from
6 other funds;

7 (2) the degree of risk that the financial instruments
8 are subject to financial reversal;

9 (3) potential post-closure risks associated with the
10 compact waste disposal facility; and

11 (4) the adequacy of the financial instruments to cover
12 the state's liabilities.

13 (b) Not later than December 1, 2012, the commission shall
14 submit a final report of the results of the review to the standing
15 committees of the senate and the house of representatives with
16 jurisdiction over the disposal of low-level radioactive waste.

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

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

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

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

1 delivers party state compact [~~low-level radioactive~~] waste to the
2 compact waste disposal facility for disposal.

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

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

13 (h) The administrative law judge assigned to the contested
14 case involving the adoption of fees under this section shall issue a
15 proposal for decision on fees proposed by the commission not later
16 than the first anniversary of the date the State Office of
17 Administrative Hearings assumes jurisdiction of the case.

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

21 Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL
22 FEES. (a) The commission's executive director may establish
23 interim party state compact waste disposal fees effective only for
24 the period beginning on the date the compact waste disposal
25 facility license holder is approved to accept waste at the disposal
26 facility and ending on the effective date of the rules establishing
27 the fees under Section 401.245. A generator is not entitled to a

1 refund, and may not be charged a surcharge, for the disposal of
2 waste under interim fees once the final fees have been adopted.

3 (b) An extension of the period during which interim rates
4 apply may not be granted. If the State Office of Administrative
5 Hearings has not issued a proposal for decision before the
6 expiration of the period under Section 401.245(h), all disposal at
7 the compact waste disposal facility must cease until the rates are
8 adopted.

9 Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE
10 DISPOSAL. (a) At any time after the commission has granted
11 approval to begin operating the compact waste disposal facility,
12 the compact waste disposal facility license holder may contract
13 rates with nonparty compact waste generators for the disposal of
14 nonparty compact waste at the facility in accordance with the
15 compact waste disposal facility license.

16 (b) Rates and contract terms negotiated under this section
17 are subject to review and approval by the commission's executive
18 director to ensure they meet all of the requirements of this
19 section.

20 (c) Rates negotiated under this section must be set both by
21 a price per curie and a price per cubic foot. Fees resulting from
22 the negotiated rates must be greater than, as applicable:

23 (1) the compact waste disposal fees under Section
24 401.245 as set by the commission that are in effect at the time the
25 rates are negotiated; or

26 (2) the interim compact waste disposal fees under
27 Section 401.2455 as set by the commission's executive director that

1 are in effect at the time the rates are negotiated.

2 (d) A contract under this section must:

3 (1) be negotiated in good faith;

4 (2) conform to applicable antitrust statutes and
5 regulations; and

6 (3) be nondiscriminatory.

7 (e) Rates set under this section must generate fees
8 sufficient to meet the criteria for party state compact waste under
9 Sections 401.246(a) and (c).

10 SECTION 7. Section 401.246, Health and Safety Code, is
11 amended by amending Subsection (a) and adding Subsection (c) to
12 read as follows:

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

16 (1) allow the compact waste facility license holder to
17 recover costs of operating and maintaining the compact waste
18 disposal facility and a reasonable profit on the operation of that
19 facility;

20 (2) provide an amount necessary to meet future costs
21 of decommissioning, closing, and postclosure maintenance and
22 surveillance of the compact waste disposal facility and the compact
23 waste disposal facility portion of the disposal facility site;

24 (3) provide an amount to fund local public projects
25 under Section 401.244;

26 (4) provide a reasonable rate of return on capital
27 investment in the facilities used for management or disposal of

1 compact waste at the compact waste disposal facility; and

2 (5) provide an amount necessary to pay compact waste
3 disposal facility licensing fees, to pay compact waste disposal
4 facility fees set by rule or statute, and to provide security for
5 the compact waste disposal facility as required by the commission
6 under law and commission rules.

7 (c) In determining compact waste disposal fees, the
8 commission shall only consider capital investment in property by
9 the compact waste disposal facility license holder that is used and
10 useful to the compact waste disposal facility as authorized under
11 this chapter. The commission may not consider the capital
12 investment costs or related costs incurred before September 1,
13 2003, in determining disposal fees.

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

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

19 (1) limits the total volume of all low-level
20 radioactive waste to be disposed of in this state from the other
21 party state or party states to 20 percent of the annual average of
22 low-level radioactive waste projected to be disposed of [~~that the~~
23 ~~governor projects will be produced~~] in this state from [~~the years~~]
24 1995 through 2045;

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

27 (3) requires the other state or states to join this

1 state in any legal action necessary to prevent states that are not
2 members of the compact from disposing of low-level radioactive
3 waste at the compact waste disposal facility;

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

7 (5) requires the other state or states to join in any
8 legal action involving liability from the compact waste disposal
9 facility;

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

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

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

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

22 (10) complies with all applicable federal law.

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

25 Sec. 401.250. PAYMENTS BY PARTY STATES.

26 (a) Notwithstanding any other provision of law, Act of the
27 legislature or the executive branch, or any other agreement, the

1 initial payment of \$12.5 million due from each nonhost party state
2 under Section 5.01 of the compact established under Section 403.006
3 is due not later than November 1, 2003. In accordance with Section
4 7.01 of the compact, the host state establishes the following terms
5 and conditions for a state to become a party state to the compact
6 after January 1, 2011:

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

11 (2) the state must pay the remainder of the amount owed
12 under Subsection (b) on the later of the date of the opening of the
13 compact waste disposal facility or the date the facility first
14 accepts waste from the state.

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

16 (1) after January 1, 2011, and before September 1,
17 2018, shall contribute a total of \$30 million to the host state,
18 including the initial payment under Subsection (a)(1); and

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

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

27 (d) A payment made under this section may not be refunded,

1 even if a party state withdraws from the compact.

2 (e) For the purposes of calculating the amount of a payment
3 required under Section 4.05(5) of the compact, the amount of a
4 payment under this section is considered to be a payment under
5 Article V of the compact.

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

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

10 (c) A holder of a license or permit issued by the commission
11 under this chapter or Chapter 361 that authorizes the storage,
12 other than disposal, of a radioactive waste or elemental mercury
13 from other persons shall remit each quarter to the commission for
14 deposit into the general revenue fund an amount equal to 20 percent
15 of the license or permit holder's gross receipts received from the
16 storage of the substance for any period exceeding one year. This
17 subsection applies only to the storage of the substance for any
18 period exceeding one year. This subsection applies only to the
19 storage of radioactive waste or elemental mercury at or adjacent to
20 the compact waste disposal facility.

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1504 passed the Senate on April 13, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1504 passed the House, with amendments, on May 18, 2011, by the following vote: Yeas 91, Nays 38, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor