

By: Seliger, Hinojosa  
(Lewis)

S.B. No. 1504

Substitute the following for S.B. No. 1504:

By: Craddick

C.S.S.B. No. 1504

A BILL TO BE ENTITLED

AN ACT

relating to the disposal of waste at 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  
authorized under Section 3.05(6) of the compact.

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

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

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

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

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

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

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

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

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

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

1 not accept waste of international origin for disposal at the  
2 facility.

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

14 (e) The compact waste disposal facility license holder may  
15 not accept more than 50,000 total cubic feet of nonparty compact  
16 waste annually. The compact waste disposal facility license holder  
17 may not accept an average of more than 120,000 curies of nonparty  
18 compact waste annually over the first 10 years of disposal  
19 operations, with an annual limit of not more than 220,000 curies.  
20 The legislature by general law may establish revised limits after  
21 considering the results of the study under Section 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. Of the remaining amount of total capacity, the host state  
6 is entitled to 80 percent of that capacity and Vermont is entitled  
7 to 20 percent.

8       (g) The commission shall assess a surcharge for the disposal  
9 of nonparty compact waste at the compact waste disposal facility.  
10 The surcharge must be assessed in addition to the total contracted  
11 rate under Section 401.2457 and is:

12             (1) 10 percent of that rate before the fifth  
13 anniversary of the date disposal operations begin; and

14             (2) 20 percent of that rate on or after the fifth  
15 anniversary of the date disposal operations begin.

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

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

21       (j) An application for the approval of the importation of  
22 nonparty compact waste may be submitted to the Texas Low-Level  
23 Radioactive Waste Disposal Compact Commission only by:

24             (1) the generator of the waste;

25             (2) the compact waste disposal facility license  
26 holder; or

27             (3) a party contracted by the generator to dispose of

1 the waste.

2 (k) The compact waste disposal facility license holder may  
3 accept for disposal at the compact waste disposal facility nonparty  
4 compact waste that is incidentally commingled, as defined by  
5 commission rule or policy, with party state compact waste at a  
6 commercial processing facility.

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

10 Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall  
11 conduct a study on the available volume and curie capacity of the  
12 compact waste disposal facility for the disposal of party state  
13 compact waste and nonparty compact waste.

14 (b) The commission shall consider and make recommendations  
15 regarding:

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

19 (2) the result of using decay factors in revising  
20 curie capacity limits;

21 (3) the necessity of containerization of the waste;  
22 and

23 (4) the effects of the projected volume and  
24 radioactivity of the waste on the health and safety of the public.

25 (c) Not later than December 1, 2012, the commission shall  
26 submit a final report of the results of the study to the standing  
27 committees of the senate and the house of representatives with

1 jurisdiction over the disposal of low-level radioactive waste.

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

5 (e) This section expires August 31, 2013.

6 Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The  
7 commission shall conduct a review of the adequacy of the financial  
8 assurance mechanisms of the compact waste disposal facility license  
9 holder that were approved by the commission before January 1, 2011,  
10 against projected post-closure costs, including a review of the  
11 adequacy of funds for unplanned events. The review shall consider:

12 (1) the segregation of financial assurance funds from  
13 other funds;

14 (2) the degree of risk that the financial instruments  
15 are subject to financial reversal;

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

18 (4) the adequacy of the financial instruments to cover  
19 the state's liabilities.

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

24 (c) This section expires August 31, 2013.

25 SECTION 4. Section 401.218, Health and Safety Code, is  
26 amended by adding Subsection (d) to read as follows:

27 (d) The compact waste disposal facility license holder may

1 not accept for disposal at the compact waste disposal facility  
2 elemental mercury the disposal of which is regulated under Chapter  
3 361.

4 SECTION 5. The heading to Section 401.245, Health and  
5 Safety Code, is amended to read as follows:

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

7 SECTION 6. Section 401.245, Health and Safety Code, is  
8 amended by amending Subsections (a) and (b) and adding Subsections  
9 (g) and (h) to read as follows:

10 (a) A compact waste disposal facility license holder who  
11 receives party state compact [~~low-level radioactive~~] waste for  
12 disposal pursuant to the compact [~~Texas Low-Level Radioactive Waste~~  
13 ~~Disposal Compact established under Chapter 403~~] shall have  
14 collected a waste disposal fee to be paid by each person who  
15 delivers party state compact [~~low-level radioactive~~] waste to the  
16 compact waste disposal facility for disposal.

17 (b) The commission by rule shall adopt and periodically  
18 revise party state compact waste disposal fees under this section  
19 according to a schedule that is based on the projected annual volume  
20 of low-level radioactive waste received, the relative hazard  
21 presented by each type of low-level radioactive waste that is  
22 generated by the users of radioactive materials, and the costs  
23 identified in Section 401.246.

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

27 (h) The administrative law judge assigned to the contested

1 case involving the adoption of fees under this section shall issue a  
2 proposal for decision on fees proposed by the commission not later  
3 than the first anniversary of the date the case is referred by the  
4 commission.

5 SECTION 7. Subchapter F, Chapter 401, Health and Safety  
6 Code, is amended by adding Sections 401.2455, 401.2456, 401.2457,  
7 401.2458, and 401.2459 to read as follows:

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

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

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

14 (1) shall assume that nonparty compact waste will be  
15 accepted for disposal at the compact waste disposal facility at the  
16 maximum disposal rate; and

17 (2) may not consider the historical operating losses  
18 incurred by the compact waste disposal facility license holder  
19 before beginning operations.

20 Sec. 401.2456. RECOVERY OF HISTORICAL OPERATING LOSSES.

21 (a) Historical operating losses incurred by the compact waste  
22 disposal facility license holder before beginning operations may be  
23 recovered by the license holder solely through revenues from the  
24 disposal of nonparty compact waste.

25 (b) The commission shall determine the amount of historical  
26 operating losses by the compact waste disposal facility license  
27 holder that have been incurred before the license holder begins



1 operations at the compact waste disposal facility. In determining  
2 the amount of historical operating losses, the commission:

3 (1) may only consider the costs, expenses, and  
4 expenditures established as true and accurate by the license  
5 holder;

6 (2) shall include:

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

11 (B) losses relating to the development and  
12 operation of any facility other than the compact waste disposal  
13 facility;

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

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

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

21 (A) any asset related to plant, property,  
22 equipment, or working capital; or

23 (B) permitting or licensing.

24 (c) In determining the amount of historical operating  
25 losses under Subsection (b), the commission shall request and the  
26 compact waste disposal facility license holder shall file in  
27 response to the request a proposed amount of historical operating

1 losses based on verifiable financial statements, supporting  
2 information, and analysis. The commission shall solicit and  
3 consider comments from party state compact waste generators  
4 regarding the license holder's proposed historical operating  
5 losses, and shall determine the amount of historical operating  
6 losses not later than the 90th day after the date the commission  
7 receives the proposed amount of the historical operating losses  
8 from the license holder.

9 Sec. 401.2457. CONTRACTS FOR WASTE DISPOSAL. (a) At any  
10 time before the adoption by the commission of party state compact  
11 waste disposal fees or maximum disposal rates, the compact waste  
12 disposal facility license holder may contract with a generator for  
13 the disposal of low-level radioactive waste at the compact waste  
14 disposal facility at fees and rates established under the contract  
15 and may dispose of waste under the contract. A contract under this  
16 subsection is subject to authorization by the compact commission  
17 under Section 3.05(6) of the compact.

18 (b) Party state compact waste generators located in the  
19 compact states of Texas and Vermont are not required to enter into  
20 any contract with the compact waste disposal facility license  
21 holder before the adoption by the commission of party state compact  
22 waste disposal fees or maximum disposal rates.

23 (c) Regardless of whether the commission approves or  
24 disapproves a contract authorized under this section, after the  
25 adoption of final party state compact waste disposal fees under  
26 Section 401.245 or final maximum disposal rates under Section  
27 401.2455, the parties to the contract are not entitled to any refund

1 or surcharge not contained in the contract.

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 Sec. 401.2458. INTERIM FEES AND RATES. (a) Before the  
8 commission adopts final disposal fees under Section 401.245 and  
9 final maximum disposal rates under Section 401.2455, the  
10 commission's executive director may set interim disposal fees and  
11 interim maximum disposal rates according to commission rules.

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

19 Sec. 401.2459. CONSIDERATIONS IN CONTRACT APPROVAL. After  
20 the commission adopts party state compact waste disposal fees under  
21 Section 401.245 and maximum disposal rates under Section 401.2455,  
22 in approving contracts between the compact waste disposal facility  
23 license holder and a party state compact waste generator, the  
24 commission may consider, subject to reasonable rules of  
25 confidentiality, the net revenues recovered by the compact waste  
26 disposal facility license holder from the disposal of nonparty  
27 compact waste.

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

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

6 (1) allow the compact waste facility license holder to  
7 recover costs of operating and maintaining the compact waste  
8 disposal facility and a reasonable profit on the operation of that  
9 facility;

10 (2) provide an amount necessary to meet future costs  
11 of decommissioning, closing, and postclosure maintenance and  
12 surveillance of the compact waste disposal facility and the compact  
13 waste disposal facility portion of the disposal facility site;

14 (3) provide an amount to fund local public projects  
15 under Section 401.244;

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

19 (5) provide an amount necessary to pay compact waste  
20 disposal facility licensing fees, to pay compact waste disposal  
21 facility fees set by rule or statute, and to provide security for  
22 the compact waste disposal facility as required by the commission  
23 under law and commission rules.

24 SECTION 9. Section 401.248(b), Health and Safety Code, is  
25 amended to read as follows:

26 (b) The state may enter into compacts with another state or  
27 several states for the disposal in this state of low-level

1 radioactive waste only if the compact:

2           (1) limits the total volume of all low-level  
3 radioactive waste to be disposed of in this state from the other  
4 party state or party states to 20 percent of the annual average of  
5 low-level radioactive waste projected to be disposed of [~~that the~~  
6 ~~governor projects will be produced~~] in this state from [~~the years~~]  
7 1995 through 2045;

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

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

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

17           (5) requires the other state or states to join in any  
18 legal action involving liability from the compact waste disposal  
19 facility;

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

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

25           (8) requires the other state or states to pay for  
26 community assistance projects selected by the host county in an  
27 amount not less than \$1 million or 10 percent of the amount

1 contributed by the other state or states;

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

5 (10) complies with all applicable federal law.

6 SECTION 10. Section 401.250, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 401.250. PAYMENTS BY PARTY STATES. (a)

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

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

21 (2) the state must pay the remainder of the amount owed  
22 under Subsection (b) on the later of the date of the opening of the  
23 compact waste disposal facility or the date the facility first  
24 accepts waste from the state.

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

26 (1) after January 1, 2011, and before September 1,  
27 2018, shall contribute a total of \$30 million to the host state,

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

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

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

12 (e) The host county, as defined by Section 2.01 of the  
13 compact, is entitled to receive 10 percent of a payment under  
14 Subsection (b).

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

17 SECTION 11. Section 401.248(d), Health and Safety Code, is  
18 repealed.

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