

1-1 By: Seliger, Hinojosa S.B. No. 1504
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 11, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 1; April 11, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1504 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the disposal of low-level radioactive waste at the
1-11 Texas Low-Level Radioactive Waste Disposal Compact waste disposal
1-12 facility.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 401.2005, Health and Safety Code, is
1-15 amended by amending Subdivision (1) and adding Subdivisions (1-a),
1-16 (1-b), (6-a), (8), and (9) to read as follows:

1-17 (1) "Compact" means the Texas Low-Level Radioactive
1-18 Waste Disposal Compact established under Section 403.006.

1-19 (1-a) "Compact waste" means low-level radioactive
1-20 waste that:

1-21 (A) is originally generated onsite in a host
1-22 state or a party state; or

1-23 (B) is not generated in a host state or a party
1-24 state but has been approved for importation to this state by the
1-25 compact commission under Section 3.05 of the compact [~~established~~
1-26 ~~under Section 403.006~~].

1-27 (1-b) "Curie capacity" means the amount of the
1-28 radioactivity of the waste that may be accepted by the compact waste
1-29 disposal facility as determined by the commission in the compact
1-30 waste disposal facility license.

1-31 (6-a) "Nonparty compact waste" means low-level
1-32 radioactive waste imported from a state other than a party state as
1-33 authorized under Section 3.05(6) of the compact.

1-34 (8) "Party state compact waste" means low-level
1-35 radioactive waste generated in a party state.

1-36 (9) "Waste of international origin" means low-level
1-37 radioactive waste that originates outside of the United States or a
1-38 territory of the United States, including waste subsequently stored
1-39 or processed in the United States.

1-40 SECTION 2. Section 401.207, Health and Safety Code, is
1-41 amended to read as follows:

1-42 Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

1-43 (a) The compact waste disposal facility license holder may not
1-44 accept low-level radioactive waste generated in another state for
1-45 disposal under a license issued by the commission unless the waste
1-46 is:

1-47 (1) accepted under a compact to which the state is a
1-48 contracting party;

1-49 (2) federal facility waste that the license holder is
1-50 licensed to dispose of under Section 401.216; or

1-51 (3) generated from manufactured sources or devices
1-52 originating in this state.

1-53 (b) The compact waste disposal facility license holder may
1-54 accept for disposal at the compact waste disposal facility nonparty
1-55 compact waste that is classified as Class A, Class B, or Class C
1-56 low-level radioactive waste in accordance with the compact waste
1-57 disposal facility license to the extent the acceptance does not
1-58 diminish the disposal volume or curie capacity available to party
1-59 states.

1-60 (c) The compact waste disposal facility license holder may
1-61 not accept waste of international origin for disposal at the
1-62 facility.

1-63 (d) The compact waste disposal facility license holder may

2-1 not accept for disposal at the compact waste disposal facility
 2-2 nonparty compact waste that does not meet the waste characteristics
 2-3 and waste forms for disposal applicable to compact waste as set
 2-4 forth by the commission in the compact waste disposal facility
 2-5 license.

2-6 (e) The compact waste disposal facility license holder may
 2-7 not accept more than 50,000 total cubic feet of nonparty compact
 2-8 waste annually. The compact waste disposal facility license holder
 2-9 may not accept more than 120,000 curies of nonparty compact waste
 2-10 annually. The legislature by general law may establish revised
 2-11 limits after considering the results of the study under Section
 2-12 401.208.

2-13 (e-1) The commission's executive director, on completion of
 2-14 the study under Section 401.208, may prohibit the license holder
 2-15 from accepting any additional nonparty compact waste if the
 2-16 commission determines from the study that the capacity of the
 2-17 facility will be limited.

2-18 (f) The compact waste disposal facility license holder may
 2-19 not accept a volume of nonparty compact waste that would exceed 30
 2-20 percent of the total volume and radioactivity established for the
 2-21 facility by the commission in the compact waste disposal facility
 2-22 license.

2-23 (g) The commission shall assess a surcharge for the disposal
 2-24 of nonparty compact waste at the compact waste disposal facility.
 2-25 The surcharge is 20 percent of the total contracted rate under
 2-26 Section 401.2456 and must be assessed in addition to the total
 2-27 contracted rate under that section.

2-28 (h) A surcharge collected under Subsection (g) shall be
 2-29 deposited to the credit of the low-level radioactive waste fund.

2-30 SECTION 3. Subchapter F, Chapter 401, Health and Safety
 2-31 Code, is amended by adding Section 401.208 to read as follows:

2-32 Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall
 2-33 conduct a study on the available volume and curie capacity of the
 2-34 compact waste disposal facility for the disposal of party state
 2-35 compact waste and nonparty compact waste.

2-36 (b) The commission shall consider and make recommendations
 2-37 regarding:

2-38 (1) the future volume and curie capacity needs of
 2-39 party state and nonparty state generators and any additional
 2-40 reserved capacity necessary to meet those needs;

2-41 (2) the result of using decay factors in revising
 2-42 curie capacity limits;

2-43 (3) the necessity of containerization of the waste;
 2-44 and

2-45 (4) the effects of the projected volume and
 2-46 radioactivity of the waste on the health and safety of the public.

2-47 (c) Not later than December 1, 2012, the commission shall
 2-48 submit a final report of the results of the study to the standing
 2-49 committees of the senate and the house of representatives with
 2-50 jurisdiction over the disposal of low-level radioactive waste.

2-51 (d) The Texas Low-Level Radioactive Waste Disposal Compact
 2-52 Commission shall use the study to anticipate the future capacity
 2-53 needs of the compact waste disposal facility.

2-54 SECTION 4. The heading to Section 401.245, Health and
 2-55 Safety Code, is amended to read as follows:

2-56 Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

2-57 SECTION 5. Section 401.245, Health and Safety Code, is
 2-58 amended by amending Subsections (a) and (b) and adding Subsections
 2-59 (g) and (h) to read as follows:

2-60 (a) A compact waste disposal facility license holder who
 2-61 receives party state compact [~~low-level radioactive~~] waste for
 2-62 disposal pursuant to the compact [~~Texas Low-Level Radioactive Waste~~
 2-63 ~~Disposal Compact established under Chapter 403~~] shall have
 2-64 collected a waste disposal fee to be paid by each person who
 2-65 delivers party state compact [~~low-level radioactive~~] waste to the
 2-66 compact waste disposal facility for disposal.

2-67 (b) The commission by rule shall adopt and periodically
 2-68 revise party state compact waste disposal fees under this section
 2-69 according to a schedule that is based on the projected annual volume

3-1 of low-level radioactive waste received, the relative hazard
3-2 presented by each type of low-level radioactive waste that is
3-3 generated by the users of radioactive materials, and the costs
3-4 identified in Section 401.246.

3-5 (g) For the purposes of a contested case involving the
3-6 adoption of fees under this section, only a party state generator of
3-7 low-level radioactive waste may be considered an interested person.

3-8 (h) The administrative law judge assigned to the contested
3-9 case involving the adoption of fees under this section shall issue a
3-10 proposal for decision on fees proposed by the commission not later
3-11 than the first anniversary of the date the case is referred by the
3-12 commission.

3-13 SECTION 6. Subchapter F, Chapter 401, Health and Safety
3-14 Code, is amended by adding Sections 401.2455 and 401.2456 to read as
3-15 follows:

3-16 Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL
3-17 FEES. (a) The executive director may establish interim party
3-18 state compact waste disposal fees effective only for the period
3-19 beginning on the date the compact waste disposal facility license
3-20 holder is approved to accept waste at the disposal facility and
3-21 ending on the effective date of the rules establishing the fees
3-22 under Section 401.245.

3-23 (b) An extension of the period during which interim rates
3-24 apply may not be granted. If the commission has not adopted and
3-25 implemented fees under Section 401.245 before the expiration of the
3-26 period under Subsection (a), all disposal at the compact waste
3-27 disposal facility must cease until the fees are adopted.

3-28 Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE
3-29 DISPOSAL. (a) Except as provided by Subsection (d), at any time
3-30 after the commission has granted approval to begin operating the
3-31 compact waste disposal facility, the compact waste disposal
3-32 facility license holder may contract rates with nonparty compact
3-33 waste generators for the disposal of nonparty compact waste at the
3-34 facility in accordance with the compact waste disposal facility
3-35 license.

3-36 (b) Rates set under this section are subject to review and
3-37 approval by the executive director.

3-38 (c) Rates negotiated under this section must be set both by
3-39 a price per curie and a price per cubic foot. Fees resulting from
3-40 the negotiated rates must be greater than:

3-41 (1) the compact waste disposal fees under Section
3-42 401.245 as set by the commission; and

3-43 (2) the interim compact waste disposal fees under
3-44 Section 401.2455 as set by the executive director.

3-45 (d) If the commission has not adopted and implemented fees
3-46 under Section 401.245 before the date specified by Section
3-47 401.2455(a), all contracts negotiated under this section are void
3-48 and disposal at the compact waste facility must cease until the
3-49 rules have been adopted and implemented.

3-50 SECTION 7. Subsection (a), Section 401.246, Health and
3-51 Safety Code, is amended to read as follows:

3-52 (a) Party state compact [~~Compact~~] waste disposal fees
3-53 adopted by the commission under Section 401.245 must be sufficient
3-54 to:

3-55 (1) allow the compact waste facility license holder to
3-56 recover costs of operating and maintaining the compact waste
3-57 disposal facility and a reasonable profit on the operation of that
3-58 facility;

3-59 (2) provide an amount necessary to meet future costs
3-60 of decommissioning, closing, and postclosure maintenance and
3-61 surveillance of the compact waste disposal facility and the compact
3-62 waste disposal facility portion of the disposal facility site;

3-63 (3) provide an amount to fund local public projects
3-64 under Section 401.244;

3-65 (4) provide a reasonable rate of return on capital
3-66 investment in the facilities used for management or disposal of
3-67 compact waste at the compact waste disposal facility; and

3-68 (5) provide an amount necessary to pay compact waste
3-69 disposal facility licensing fees, to pay compact waste disposal

4-1 facility fees set by rule or statute, and to provide security for
4-2 the compact waste disposal facility as required by the commission
4-3 under law and commission rules.

4-4 SECTION 8. Subsection (b), Section 401.248, Health and
4-5 Safety Code, is amended to read as follows:

4-6 (b) The state may enter into compacts with another state or
4-7 several states for the disposal in this state of low-level
4-8 radioactive waste only if the compact:

4-9 (1) limits the total volume of all low-level
4-10 radioactive waste to be disposed of in this state from the other
4-11 party state or party states to 20 percent of the annual average of
4-12 low-level radioactive waste projected to be disposed of [that the
4-13 governor projects will be produced] in this state from [the years]
4-14 1995 through 2045;

4-15 (2) gives this state full administrative control over
4-16 management and operation of the compact waste disposal facility;

4-17 (3) requires the other state or states to join this
4-18 state in any legal action necessary to prevent states that are not
4-19 members of the compact from disposing of low-level radioactive
4-20 waste at the compact waste disposal facility;

4-21 (4) allows this state to charge a fee for the disposal
4-22 of low-level radioactive waste at the compact waste disposal
4-23 facility;

4-24 (5) requires the other state or states to join in any
4-25 legal action involving liability from the compact waste disposal
4-26 facility;

4-27 (6) requires the other state or states to share the
4-28 full cost of constructing the compact waste disposal facility;

4-29 (7) allows this state to regulate, in accordance with
4-30 federal law, the means and routes of transportation of the
4-31 low-level radioactive waste in this state;

4-32 (8) requires the other state or states to pay for
4-33 community assistance projects selected by the host county in an
4-34 amount not less than \$1 million or 10 percent of the amount
4-35 contributed by the other state or states;

4-36 (9) is agreed to by the Texas Legislature, the
4-37 legislature of the other state or states, and the United States
4-38 Congress; and

4-39 (10) complies with all applicable federal law.

4-40 SECTION 9. Section 401.250, Health and Safety Code, is
4-41 amended to read as follows:

4-42 Sec. 401.250. PAYMENTS BY PARTY STATES.

4-43 (a) Notwithstanding any other provision of law, Act of the
4-44 legislature or the executive branch, or any other agreement, the
4-45 initial payment of \$12.5 million due from each nonhost party state
4-46 under Section 5.01 of the compact established under Section 403.006
4-47 is due not later than November 1, 2003. In accordance with Section
4-48 7.01 of the compact, the host state establishes the following terms
4-49 and conditions for a state to become a party state to the compact
4-50 after January 1, 2011:

4-51 (1) the state must make an initial payment of half of
4-52 the total amount due to the host state under Subsection (b) on the
4-53 later of September 1, 2011, or the date the state becomes a party
4-54 state; and

4-55 (2) the state must pay the remainder of the amount owed
4-56 under Subsection (b) on the later of the date of the opening of the
4-57 compact waste disposal facility or the date the facility first
4-58 accepts waste from the state.

4-59 (b) Each state that becomes a party state:

4-60 (1) after January 1, 2011, and before September 1,
4-61 2018, shall contribute a total of \$30 million to the host state,
4-62 including the initial payment under Subsection (a)(1); and

4-63 (2) on or after September 1, 2018, and before
4-64 September 1, 2023, shall contribute \$50 million to the host state,
4-65 including the initial payment under Subsection (a)(1).

4-66 (c) The requirements of this section apply to a state that
4-67 becomes a party state after January 1, 2011, regardless of whether
4-68 the state had previously been a party to the compact. A state that
4-69 has withdrawn as a party state shall pay the previously committed

5-1 fee of \$25 million in addition to the fees set in Subsection (b).
5-2 (d) A payment made under this section may not be refunded,
5-3 even if a party state withdraws from the compact.
5-4 (e) This section prevails over any other law or agreement in
5-5 conflict or inconsistent with this section.
5-6 SECTION 10. Section 401.271, Health and Safety Code, is
5-7 amended by adding Subsection (c) to read as follows:
5-8 (c) A holder of a license or permit issued by the commission
5-9 under this chapter or Chapter 361 that authorizes the management,
5-10 other than disposal, of a radioactive or hazardous substance for
5-11 other persons shall remit each quarter to the commission for
5-12 deposit into the general revenue fund an amount equal to 20 percent
5-13 of the license or permit holder's gross receipts received for
5-14 management of the substance for any period exceeding one year.
5-15 SECTION 11. Subsection (d), Section 401.248, Health and
5-16 Safety Code, is repealed.
5-17 SECTION 12. This Act takes effect immediately if it
5-18 receives a vote of two-thirds of all the members elected to each
5-19 house, as provided by Section 39, Article III, Texas Constitution.
5-20 If this Act does not receive the vote necessary for immediate
5-21 effect, this Act takes effect September 1, 2011.

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