

Amend CSSB 791 (senate committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 401.003(15), Health and Safety Code, is amended to read as follows:

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county in this state, or a county in this state adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county in this state in which nuclear or radioactive material is or will be located or a county in this state adjacent to that county.

SECTION 2. Section 401.052(d), Health and Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(d) Fees assessed under this section:

(1) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(2) shall be collected by the department and deposited to the credit of the perpetual care account;

(3) shall be used [~~exclusively~~] by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(4) may not be collected on waste disposed of at a federal facility waste disposal facility [~~shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000~~].

SECTION 3. Section 401.109(a), Health and Safety Code, is amended to read as follows:

(a) The department or commission may require a holder of a

license issued by the agency to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter. The department [~~or commission~~] shall deposit security provided to the department under this section to the credit of the perpetual care account. The department [~~or commission~~] by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

SECTION 4. Section 401.152, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The department [~~agency~~] shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department [~~agency~~] shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the license holder;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) The commission shall use the security provided by the license holder to pay the costs of actions taken or to be taken under this section. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the license holder;
- (2) convert an amount of security to cash, as necessary; and
- (3) disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

SECTION 5. Section 401.2005, Health and Safety Code, is

amended by adding Subdivision (6-b) to read as follows:

(6-b) "Operational year" means the period from April 27 of one year through April 26 of the following year unless otherwise defined by the Texas Low-Level Radioactive Waste Disposal Compact Commission by rule. The first operational year is April 27, 2012, to April 26, 2013.

SECTION 6. Section 401.202, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a compact waste disposal facility license and the decision to issue the license is later reversed or remanded to the commission by order of a court on the basis of a procedural error:

(1) all terms of the license remain in effect until the court determines in a final order that all procedural errors have been resolved by the commission; and

(2) the commission's executive director may enter into a compliance agreement with the license holder authorizing continued operation of the disposal facility until the court determines in a final order that all procedural errors have been resolved by the commission.

SECTION 7. Section 401.207, Health and Safety Code, is amended by adding Subsection (d-1) and amending Subsections (e) and (h) to read as follows:

(d-1) Beginning in the third operational year, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three. The commission by rule shall establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with this subchapter. Before establishing those requirements, the commission must determine that competitive volume-reduction technologies and companies using those technologies exist in the marketplace in the United States.

(e) The compact waste disposal facility license holder may not enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule [~~accept more than 50,000 total cubic feet of nonparty compact waste annually~~]. The compact waste disposal facility license holder may not accept more than 300,000 [~~120,000~~] curies of nonparty compact waste annually until April 26, 2019 [~~, except that in the first year the license holder may accept 220,000 curies~~]. The legislature by general law may establish revised limits after considering the results of the study under Section 401.208.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account [~~low-level radioactive waste fund~~].

SECTION 8. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Section 401.2077 to read as follows:

Sec. 401.2077. CLASS A PARTY STATE COMPACT WASTE. To the greatest extent practicable, if a party state compact waste generator seeks to export low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule, or a subset of that waste, the compact waste disposal facility license holder shall work with the generator to support the export of the waste. The Texas Low-Level Radioactive Waste Disposal Compact Commission shall grant export petitions for Class A low-level radioactive waste from party state compact waste generators as it finds appropriate.

SECTION 9. Section 401.218, Health and Safety Code, is

amended by adding Subsection (d) to read as follows:

(d) The commission's executive director may adjust, correct, or otherwise modify a license on completion of an annual performance assessment or other study. A modification by the executive director to a license regarding a waste form, type, or stream must be based on a site-specific performance assessment and objectives as defined by commission rule. The license holder is not required to submit an amendment application for a license modification initiated by the executive director in response to a site-specific performance assessment or other study.

SECTION 10. Section 401.2456, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (f) and (g) to read as follows:

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

(f) The commission shall adopt rules governing the review and approval by the commission's executive director of contract terms negotiated under this section.

(g) A person affected by an action under this section may seek judicial review under Subchapter I, Chapter 5, Water Code.

SECTION 11. Section 401.249(e), Health and Safety Code, is amended to read as follows:

(e) The commission may transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by the commission under Section 401.303.

SECTION 12. Section 401.301(d), Health and Safety Code, is amended to read as follows:

(d) The commission and department shall [~~may~~] require that each person who holds a specific license issued by the agency pay to the agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual

care account. The fees are not refundable.

SECTION 13. Section 401.303(g), Health and Safety Code, is amended to read as follows:

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account or the environmental radiation and perpetual care account, as applicable, the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state.

SECTION 14. Sections 401.305(b), (c), (d), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(b) The department [~~and commission each~~] shall deposit to the credit of the perpetual care account money and security it receives [~~they receive~~] under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

(c) Money and security in the perpetual care account may be administered by the department [~~or commission~~] only for storage, maintenance, and distribution of mammography medical records or the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department [~~or commission~~].

(e) The department [~~or commission~~] may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful

obligation, insolvency, or other inability by the holder of a license issued by the department [~~or commission~~] to meet the requirements of this chapter or of department [~~or commission~~] rules;

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation; and

(3) to protect the health and safety of mammography patients by assuring mammography medical records are made available to affected patients.

(f) The department [~~or commission~~] may provide, by the terms of a contract or lease entered into between the department [~~or commission~~] and any person, by the terms of a mammography certification issued by the department [~~or commission~~] to any person, or by the terms of a license issued to any person, for the storage, maintenance, and distribution of mammography medical records. The department [~~or commission~~] may provide, by the terms of a contract or lease entered into between the department [~~or commission~~] and any person or by the terms of a license issued by the department [~~or commission~~] to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department [~~or commission~~] jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department [~~or commission~~] liable for the costs of storage, maintenance, and distribution of mammography medical records arising from a mammography certification holder's failure to store, maintain, and make available mammography medical records or for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department [~~or commission~~] rules.

SECTION 15. Subchapter H, Chapter 401, Health and Safety Code, is amended by adding Sections 401.306 and 401.307 to read as

follows:

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and

perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAP. (a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches \$150 million. The fees are reinstated when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to \$75 million or less.

(b) The surcharge collected under Section 401.207(h) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

SECTION 16. The following sections of the Health and Safety Code are repealed:

- (1) Section 401.245(h);
- (2) Section 401.2455(b);
- (3) Section 401.301(e); and
- (4) Section 403.0052.

SECTION 17. (a) As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Sections 401.207(d-1) and 401.218(d), Health and Safety Code, as added by this Act.

(b) As soon as practicable after the effective date of this Act but not later than the first anniversary of the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Section 401.2456(b), Health and Safety Code, as amended by this Act, and Section 401.2456(f), Health and Safety Code, as added by this Act.

(c) As soon as practicable after the effective date of this Act but not later than January 1, 2014, the Texas Commission on Environmental Quality and the Department of State Health Services shall update the portion of the memorandum of understanding between

the two agencies under Section 401.069, Health and Safety Code, that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

SECTION 18. The changes in law made by this Act apply only to a contract for the disposal of compact waste or nonparty compact waste that is signed on or after the effective date of this Act. A contract signed before the effective date of this Act is governed by the law in effect on the date the contract was signed, and the former law is continued in effect for that purpose.

SECTION 19. This Act takes effect September 1, 2013.