

BILL ANALYSIS

Senate Research Center

S.B. 347
By: Seliger
Natural Resources
7/15/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 347 is intended to streamline the funding mechanism for the Texas Low-Level Radioactive Waste Disposal Compact Commission (compact commission). Under this legislation, on the first day of the fiscal year, the comptroller of public accounts of the State of Texas (comptroller) will transfer the amount appropriated to the compact commission from the low-level radioactive waste fund (Fund 88) to the compact commission account (Fund 5151). S.B. 1605, 82nd Legislature, Regular Session, 2011, established the compact commission as an independent entity from the Texas Commission on Environmental Quality, and in doing so, set up Fund 5151 to support the operations of the compact commission. Currently, Fund 5151 is populated by disposal fees, over which the compact commission has no control. By fully funding the compact commission at the beginning of the fiscal year, the compact commission can focus on its statutory role, regulating import and export of low-level radioactive waste to and from the Texas-Vermont compact disposal facility in Andrews, Texas. S.B. 347 also directs the comptroller to move any unencumbered funds back to Fund 88 at the end of each fiscal year, thus not allowing for an accumulation of funds.

S.B. 347 amends current law relating to funding for the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission and to the disposal of certain low-level radioactive waste.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Department of State Health Services is modified in SECTION 2 (Section 401.109, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4 (Section 401.207, Health and Safety Code) and SECTION 14 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts 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, and amends it as follows:

(d) Provides that fees assessed under this section (Rules for Transportation and Routing):

(1) are authorized to provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission (compact commission);

(2)-(3) Makes nonsubstantive changes;

(4) are required to be used by the Department of State Health Services (DSHS) or other department designated by the executive commissioner of the Health and Human Services Commission (HHSC), rather than required to be used exclusively by DSHS or other department designated by the executive commissioner of HHSC, 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) (relating to requiring the executive commissioner of HHSC to adopt rules that provide for transportation and routing of radioactive material and waste in this state); and

(5) are prohibited from being collected on waste disposal of at a federal waste disposal facility. Deletes existing text requiring fees assessed under this section to 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 are required to be reinstated to bring the balance of fees collected to \$500,000.

SECTION 2. Amends Section 401.109(a), Health and Safety Code, as follows:

(a) Requires DSHS or other department designated by the executive commissioner of HHSC, rather than DSHS or other department designated by the executive commissioner of HHSC or the Texas Commission on Environmental Quality (TCEQ), to deposit security provided to DSHS or other department designated by the executive commissioner of HHSC under this section to the credit of the perpetual care account. Requires DSHS or other department designated by the executive commissioner of HHSC, rather than DSHS or other department designated by the executive commissioner of HHSC or TCEQ, by rule to provide that any evidence of security is required to be made payable to the credit of the perpetual care account. Requires TCEQ to deposit security provided to TCEQ under this section to the credit of the environmental radiation and perpetual care account. Requires TCEQ to provide that security is required to be made payable to the credit of the environmental radiation and perpetual care account.

SECTION 3. Amends Section 401.152, Health and Safety Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires DSHS or other department designated by the executive commissioner of HHSC, rather than the agency (DSHS or other department designated by the executive commissioner of HHSC or TCEQ), to 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. Requires DSHS or other department designated by the executive commissioner of HHSC, rather than the agency, to send to the comptroller of public accounts of the State of Texas (comptroller) a copy of its order together with necessary written requests authorizing the comptroller to, among other authorizations, disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) Requires TCEQ to use the security provided by the license holder to pay the costs of actions taken or to be taken under this section, including costs associated with the compact commission. Requires TCEQ to 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 4. Amends Section 401.207, Health and Safety Code, by adding Subsections (d-1), (d-2), (d-3), and (e-2) and amending Subsections (e), (e-1), and (h), as follows:

(d-1) Authorizes the compact waste disposal facility license holder, beginning September 1, 2015, to accept nonparty compact waste for disposal at the facility only if:

- (1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter (Special Provisions Concerning Low-Level Radioactive Waste Disposal) as provided by TCEQ rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g) (relating to requiring TCEQ to assess a certain surcharge for the disposal of nonparty compact waste at the compact waste disposal facility).

(d-2) Provides that if volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) Authorizes TCEQ to assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. Requires that the fee be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Authorizes fees deposited under this subsection to be transferred and used only to support the operations of the compact commission under Section 401.251.

(e) Prohibits the compact waste disposal facility license holder from collecting a fee under this section or entering 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 TCEQ rule unless the waste is containerized. Authorizes the compact waste disposal facility license holder to collect a fee and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or

(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.

Deletes existing text prohibiting the compact waste disposal facility license holder from accepting more than 50,000 total cubic feet of nonparty compact waste annually; and from accepting more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder is authorized to accept 220,000 curies.

(e-1) Creates this subsection from existing text. Authorizes the legislature by general law to establish revised limits under Subsection (e) after considering the results of the study under Section 401.208 (Study of Capacity).

(e-2) Redesignates existing Subsection (e-1) as Subsection (e-2). Makes no further change to this subsection.

(h) Requires that a surcharge collected under Subsection (g) be deposited to the credit of the environmental radiation and perpetual care account, rather than to the credit of the low-level radioactive waste fund.

SECTION 5. Amends Section 401.208(c), Health and Safety Code, to require TCEQ, not later than December 1, 2016, rather than not later than December 1, 2012, to submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

SECTION 6. Amends Section 401.218, Health and Safety Code, by adding Subsection (d), to authorize TCEQ's executive director to charge a license holder a fee to cover the administrative costs of the executive director's action to adjust, correct, or otherwise modify a license in addition to the fees charged to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

SECTION 7. Amends Section 401.249, Health and Safety Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Authorizes TCEQ to transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by TCEQ under Section 401.303 (Payment for Maintenance, Surveillance, or Other Care). Requires TCEQ to notify the compact commission of an action TCEQ takes under this subsection.

(f) Requires TCEQ to deposit in the account the portion of the fee collected under Section 401.245 (Party State Compact Waste Disposal Fees) that is calculated to support the activities of the compact commission as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 (Text of Compact), Health and Safety Code). Requires that the fee be assessed for party state compact waste and nonparty compact waste.

SECTION 8. Amends Section 401.251, Health and Safety Code, by amending Subsections (b) and (c), as follows:

(b) Requires the comptroller, on the first day of each state fiscal year, to transfer from the low-level radioactive waste fund to the compact commission account an amount equal to the amount appropriated for that state fiscal year. Requires the comptroller, on September 30 of each fiscal year, to transfer the unexpended and unencumbered money from the previous fiscal year in the compact commission account to the low-level radioactive waste fund. Deletes existing text requiring TCEQ to deposit in the account the portion of the fee collected under Section 401.245 that is calculated to support the activities of the compact commission as required by Article 4.04(4), Section 403.006.

(c) Authorizes money in the compact commission account to be used, rather than appropriated, only to support the operations of the compact commission.

SECTION 9. Amends Section 401.301(d), Health and Safety Code, as follows:

(d) Requires TCEQ and DSHS or other department designated by the executive commissioner of HHSC, rather than authorizes TCEQ and DSHS or other department designated by the executive commissioner of HHSC, to 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) (relating to requiring TCEQ and the executive commissioner of HHSC each by rule to set the fee in an amount that is prohibited from exceeding certain actual expenses incurred annually). Requires that fees collected by DSHS or other department designated by the executive commissioner of HHSC under this subsection be deposited to the credit of the perpetual care account. Requires that fees collected by TCEQ under this subsection be deposited to the environmental radiation and perpetual care account. Provides that the holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

SECTION 10. Amends Section 401.303(g), Health and Safety Code, as follows:

(g) Requires the issuing agency to 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 if a license holder satisfies the obligations under this chapter (Radioactive Materials and Other Sources of Radiation).

SECTION 11. Amends Sections 401.305(b), (c), (d), (e), (f), and (g), Health and Safety Code, as follows:

(b) Requires DSHS or other department designated by the executive commissioner of HHSC, rather than DSHS or other department designated by the executive commissioner of HHSC and TCEQ each, to deposit to the credit of the perpetual care account money and security it receives under this chapter, including an administrative penalty collected by DSHS or other department designated by the executive commissioner of HHSC under Sections 401.384 (Administrative Penalty), 401.385 (Preliminary Report of Violation), 401.386 (Notice of Preliminary Report), 401.387 (Consent to Penalty), 401.388 (Hearing and Decision), 401.389 (Disposition of Penalty; Judicial Review), and 401.390 (Remitting Penalty Payments; Releasing Bonds) but excluding fees collected under Sections 401.301(a) (relating to authorizing TCEQ and DSHS or other department designated by the executive commissioner of HHSC to collect a fee for each license and registration the agency issues), (b) (relating to requiring TCEQ and the executive commissioner of HHSC by rule to set the fee at a certain amount), and (c) (relating to authorizing TCEQ and DSHS or other department designated by the executive commissioner of HHSC to collect a certain fee, in addition to the license and registration fee, from each licensee or registrant who fails to pay the fees authorized by this section) and 401.302 (Nuclear Reactor and Fixed Nuclear Facility Fee). Makes a nonsubstantive change.

(c) Changes references to DSHS or other department designated by the executive commissioner of HHSC or TCEQ to DSHS or other department designated by the executive commissioner of HHSC.

(d)-(g) Makes conforming changes.

SECTION 12. Amends Subchapter H, Chapter 401, Health and Safety Code, by adding Sections 401.306 and 401.307, as follows:

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) Provides that the environmental radiation and perpetual care account is an account in the general revenue fund to support the activities of the compact commission.

(b) Requires TCEQ to 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). Requires that interest earned on money in the environmental radiation and perpetual care account be credited to the environmental radiation and perpetual care account.

(c) Authorizes money and security in the environmental radiation and perpetual care account to be administered by TCEQ 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) Prohibits money and security in the environmental radiation and perpetual care account from being used for normal operating expenses of TCEQ.

(e) Authorizes TCEQ to 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 TCEQ to meet the requirements of this chapter or of TCEQ rules; and

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

(f) Authorizes TCEQ to provide, by the terms of a contract or lease entered into between TCEQ 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 TCEQ jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) Provides that the existence of the environmental radiation and perpetual care account does not make TCEQ 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 TCEQ rules.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) Provides that 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 \$100 million. Provides that 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 \$50 million or less.

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

(c) Provides that notwithstanding Subsection (a), a fee imposed by TCEQ under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches \$2 million. Provides that if the amount in that account attributable to those fees is reduced to \$1.5 million or less, the fee is reinstated until the amount reaches \$2 million.

(d) Provides that notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account attributable to those fees reaches \$500,000. Provides that if the amount in that account attributable to those fees is reduced to \$350,000 or less, the fee is reinstated until the amount reaches \$500,000.

(e) Provides that this section does not relieve a generator from liability for a transportation accident involving low-level radioactive waste.

SECTION 13. Repealer: Section 401.245(h) (relating to requiring the administrative law judge assigned to the contested case involving the adoption of fees under this section to issue a proposal for decision on fees proposed by TCEQ not later than the first anniversary of the date the State Office of Administrative Hearings (SOAH) assumes jurisdiction of the case), Health and Safety Code;

Repealer: Section 401.2455(b) (relating to prohibiting an extension of the period during which interim rates apply from being granted; and requiring that all disposal at the compact waste disposal facility cease until the rates are adopted if SOAH has not issued a proposal for decisions before the expiration of the period under Section 401.2475(h)), Health and Safety Code;

Repealer: Section 401.301(e) (relating to requiring TCEQ and DSHS or other department designated by the executive commissioner of HHSC to suspend assessment of a fee imposed under Subsection (d) if the amount of fees collected under that subsection reaches \$500,000; and requiring TCEQ and DSHS or other department designated by the executive commissioner of HHSC to reinstitute assessment of the fee until the balance

reaches \$500,000 if the balance of fees collected subsequently is reduced to \$350,000 or less), Health and Safety Code; and

Repealer: Section 403.0052 (Biennial Reports to Legislature), Health and Safety Code.

SECTION 14. (a) Requires TCEQ, as soon as practicable after the effective date of this Act, to adopt rules to implement Section 401.207(d-1) and Section 401.218(d), Health and Safety Code, as added by this Act.

(b) Requires TCEQ and DSHS, as soon as practicable after the effective date of this Act but not later than January 1, 2014, to update the portion of the memorandum of understanding between the two agencies under Section 401.069 (Memorandum of Understanding), Health and Safety Code, that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

SECTION 15. Provides that 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. Provides that 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 16. Effective date: September 1, 2013.