

BILL ANALYSIS

C.S.S.B. 791
By: Seliger
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have raised concerns regarding a number of issues relating to the regulation of low-level radioactive waste, including the disposal of waste at the facility in Andrews County. The parties contend that certain regulation needs to be revised following TCEQ's study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste. C.S.S.B. 791 seeks to address these issues by amending the law relating to the regulation of low-level radioactive waste disposal facilities and radioactive substances.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 4, 7, and 14 of this bill.

ANALYSIS

C.S.S.B. 791 amends the Health and Safety Code to establish the environmental radiation and perpetual care account as an account in the general revenue fund and to require the Texas Commission on Environmental Quality (TCEQ) to deposit to the credit of the account money and security it receives under the Texas Radiation Control Act. The bill sets out provisions relating to the administration and use of the account, TCEQ liability, and caps for the perpetual care account and the environmental radiation and perpetual care account. The bill 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 the Texas Radiation Control Act as needed to carry out the act's purposes.

C.S.S.B. 791 requires TCEQ to deposit security provided by the holder of a license issued under the Texas Radiation Control Act to the credit of the environmental radiation and perpetual care account, rather than to the credit of the perpetual care account, and to provide that security must be made payable to the credit of the environmental radiation and perpetual care account. The bill specifies that a Department of State Health Services (DSHS) written request to the comptroller relating to a certain order relating to corrective actions and measures is required to authorize the comptroller of public accounts, among other things, to disburse from the security in the radiation and perpetual care account, rather than the perpetual care account, the amount necessary to pay the costs. The bill requires TCEQ to use the security provided by the license holder to pay the costs of actions taken or to be taken pursuant to such an order and requires TCEQ to send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to enforce security supplied by the licensed holder; to convert an amount of security to cash, as necessary; and to disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

C.S.S.B. 791 authorizes the compact waste disposal facility license holder, beginning September 1, 2015, to 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 bill requires TCEQ by rule, as soon as practicable after the bill's effective date, to establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with special provisions of the Texas Radiation Control Act concerning low-level radioactive waste disposal. The bill requires TCEQ, before establishing requirements for volume reduction of low-level radioactive waste streams, to determine first that there are at least two unaffiliated companies in operation in the U.S. marketplace that offer low-level radioactive waste volume reduction for each stream. The bill specifies that these requirements do not apply to Class B or Class C resins nor do they apply if a 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 bill prohibits the compact waste disposal facility license holder from 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 certain federal law and TCEQ rule unless the waste is containerized. The bill revises the limitations on the amount of nonparty compact waste for which the compact waste disposal facility license holder is authorized to dispose. The bill requires the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the compact waste disposal facility to 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.

C.S.S.B. 791 extends the deadline by which TCEQ is required to submit the final report of the results of its study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste from December 1, 2012, to December 1, 2016. The bill requires TCEQ, through the agency's internal audit, to conduct random audits of shipments of the site to ensure that volumes, waste contents, and classifications are represented accurately and requires TCEQ to report those findings to the legislature in the biennial report.

C.S.S.B. 791 authorizes the executive director of TCEQ to adjust, correct, or otherwise modify compact waste disposal facility license condition 143 on completion of an annual performance assessment. The bill requires a modification by the executive director to a license regarding a waste form, type, or stream to be based on a site-specific performance assessment and objectives as defined by TCEQ rule and to be processed as a minor amendment. The bill requires TCEQ, as soon as practicable after the bill's effective date, to adopt rules to implement these provisions.

C.S.S.B. 791 subjects rates and contract terms negotiated pursuant to contracts for nonparty compact waste disposal to TCEQ rules, in addition to review and approval by the executive director of TCEQ to ensure they meet all of the applicable requirements. The bill requires TCEQ, as soon as practicable after the bill's effective date but not later than the first anniversary of that date, to adopt rules governing the review and approval by the executive director of such contract terms. The bill authorizes a person affected by an action under statutory provisions regarding such contracts to seek judicial review as set out in Water Code provisions governing TCEQ judicial review.

C.S.S.B. 791 authorizes TCEQ to transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account, rather than to the perpetual care account, to make payments required by TCEQ for maintenance, surveillance, or other care related to an activity licensed under the Texas Radiation Control Act. The bill requires TCEQ and DSHS to require, rather than authorizes TCEQ and DSHS to require, each person who holds a specific license issued by the agency to pay to the agency an additional five percent of the appropriate license or registration fee. The bill requires fees collected by TCEQ to be deposited to the environmental radiation and perpetual care account, rather than to the credit of the perpetual care account. The bill expressly does not require the holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore to pay the additional fee before the beginning of operations under the license. The bill removes language requiring TCEQ to deposit money and security it receives to the credit of the perpetual care account and applies provisions governing that account only to DSHS.

C.S.S.B. 791 amends 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, to specify uses to which fees for the transportation and routing of radioactive material and waste in Texas are required to be applied by DSHS for emergency planning for and response to transportation accidents involving low-level radioactive waste include first responder training in counties through which transportation routes for such material and waste are designated. The bill prohibits collection of such fees on waste disposed of at a federal facility waste disposal facility and removes language providing for the suspension and reinstatement of fee collection upon reaching certain thresholds.

C.S.S.B. 791 requires TCEQ and DSHS, as soon as practicable after the bill's effective date but not later than January 1, 2014, to update the portion of the memorandum of understanding between the two agencies that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

C.S.S.B. 791 repeals the following provisions of the Health and Safety Code:

- A provision relating to the issuance of a proposal regarding a contested case involving the adoption of party state compact waste disposal fees
- A provision relating to a prohibition against an extension of the period during which interim rates apply and to a requirement that all disposal at the compact waste disposal facility cease until the rates are adopted
- A provision relating to the suspension and reinstatement upon reaching certain thresholds of the assessment of an additional licensing fee for certain license holders
- Provisions relating to TCEQ's biennial report to the legislature regarding the Texas Low-Level Radioactive Waste Disposal Compact

C.S.S.B. 791 repeals Sections 401.245(h), 401.2455(b), 401.301(e), and 403.0052, Health and Safety Code.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 791 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (d), Section 401.052, 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.

SECTION 2. Subsection (a), Section 401.109, Health and Safety Code, is amended.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Section 401.152, Health and Safety Code, is amended.

SECTION 3. Same as engrossed version.

SECTION 4. Section 401.207, Health and Safety Code, is amended by adding Subsection (d-1) and amending Subsections (e) and (h) to read as follows:

SECTION 4. Section 401.207, Health and Safety Code, is amended by adding Subsections (d-1), (d-2), and (e-1) and amending Subsections (e) and (h) to read as follows:

(d-1) Beginning September 1, 2015, 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 requirements for volume reduction of low-level radioactive waste streams, the commission must first determine that there are at least two unaffiliated companies in operation in the United States marketplace that offer low-level radioactive waste volume reduction for each stream. In this subsection, "unaffiliated" means not associated with one another as a subordinate, subsidiary, or member.

(d-1) Beginning September 1, 2015, 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 requirements for volume reduction of low-level radioactive waste streams, the commission must first determine that there are at least two unaffiliated companies in operation in the United States marketplace that offer low-level radioactive waste volume reduction for each stream. This subsection does not apply to Class B or Class C resins.

(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]. In the state fiscal year beginning September 1, 2013, the [The] compact waste disposal facility license holder may not accept more than 300,000 [120,000] curies of nonparty compact waste. In the state fiscal years beginning September 1, 2014, and September 1, 2015, [annually, except that in the first year] the license holder may not accept more than 220,000 curies of

(d-2) 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 requirements of Subsection (d-1) do not apply.

(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 unless the waste is containerized. The compact waste disposal facility license holder may 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

~~nonparty compact waste annually. In the state fiscal year beginning September 1, 2016, the compact waste disposal facility license holder may not accept more than 120,000 curies of nonparty compact waste.~~

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 5. Subchapter F, Chapter 401, Health and Safety Code, is amended.

SECTION 6. Section 401.208, Health and Safety Code, is amended.

SECTION 7. 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 license condition 150 on completion of an annual performance assessment. 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 and must be processed as a minor amendment.

SECTION 8. Section 401.2456, Health and Safety Code, is amended.

SECTION 9. Subsection (e), Section 401.249, Health and Safety Code, is amended.

SECTION 10. Subsection (d), Section 401.301, 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

~~[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 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies].~~

(e-1) The legislature by general law may establish revised limits under Subsection (e) 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~~].

No equivalent provision.

SECTION 5. Same as engrossed version.

SECTION 6. 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 license condition 143 on completion of an annual performance assessment. 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 and must be processed as a minor amendment.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Subsection (d), Section 401.301, 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 11. Subsection (g), Section 401.303, Health and Safety Code, is amended.

SECTION 12. Subsections (b), (c), (d), (e), (f), and (g), Section 401.305, Health and Safety Code, are amended.

SECTION 13. 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

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. 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. Same as engrossed version.

SECTION 11. Same as engrossed version.

SECTION 12. 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).

(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.

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 CAPS.

(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 \$25 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 \$12.5 million or less.

(b) 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) Notwithstanding Subsection (a), a fee imposed by the commission 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. 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) 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. 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. The costs of all clean-up associated with a transportation accident will be borne by the generator of the product proportional to its share of the load.

SECTION 14. The following sections of the Health and Safety Code are repealed:

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

SECTION 15. (a) As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Subsection (d-1), Section 401.207, and Subsection (d), Section 401.218, 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 Subsection (b), Section 401.2456, Health and Safety Code, as amended by this Act, and Subsection (f), Section 401.2456, Health and Safety Code, as added by this Act.

(c) As soon as practicable after the effective

(c) Notwithstanding Subsection (a), a fee imposed by the commission 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. 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) 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. 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) This section does not affect the liability of a generator for a transportation accident.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

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 16. 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 17. This Act takes effect September 1, 2013.

SECTION 15. Same as engrossed version.

SECTION 16. Same as engrossed version.