

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 791  
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Natural Resources  
4/3/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.S.B. 791 is an omnibus low-level radioactive waste (LLRW) bill. The bill addresses and clarifies a number of issues relating to LLRW, including the disposal of waste at the facility in Andrews County. Subsequently, it seeks to clarify and delineate that the current radiation and perpetual care account is for the Department of State Health Services (DSHS) and establishes a new account, the environmental radiation and perpetual care account for the Texas Commission on Environmental Quality (TCEQ).

The bill clarifies that only a Texas resident of a county adjacent to Andrews County can be considered an affected person by means of the Texas contested case process and allows for the facility to continue to operate up until the point when a court issues a final order. Additionally, C.S.S.B. 791 codifies current Texas Low-Level Radioactive Waste Disposal Compact Commission (compact commission) policy.

S.B. 1504, 82nd Legislature, Regular Session, 2011, directed TCEQ to undergo a capacity study to evaluate the needs of compact generators over the course of the license. In order to ensure volume capacity for compact generators, C.S.S.B. 791 seeks to promote export of Class A LLRW and require that all classes of waste being imported should be volume reduced by a factor of three, an industry standard. Because the report demonstrates that compact generators will not generate as many curies as the license allows for, and because there are many generators outside of the Texas compact that would like to dispose of their Class B/C waste in this facility, C.S.S.B. 791 allows for the facility, pending approval by the compact commission, to accept up to 220,000 curies annually from non-compact generators.

C.S.S.B. 791 amends current law relating to the regulation of low-level radioactive waste disposal facilities and radioactive substances.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is rescinded in SECTION 3 (Section 401.109, Health and Safety Code) and SECTION 12 (Section 401.305, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 401.109, Health and Safety Code), SECTION 7 (Section 401.207, Health and Safety Code), SECTION 9 (Section 401.218, Health and Safety Code), SECTION 10 (Section 401.2456, Health and Safety Code), SECTION 13 (Section 401.306, Health and Safety Code), SECTION 16, SECTION 17, and SECTION 18 of this bill.

Rulemaking authority is expressly granted to the Texas Low-Level Radioactive Waste Disposal Compact Commission in SECTION 5 (Section 401.2005, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 401.003(15), Health and Safety Code, to redefine "person affected."

SECTION 2. Amends Section 401.052(d), Health and Safety Code, as amended by Chapter 580 (H.B. 1678), Acts of the 78th Legislature, Regular Session, 2003, as follows:

(d) Provides that fees assessed under this section are required to be used, rather than used exclusively, by the Department of State Health Services (DSHS) 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 the Health and Human Services Commission to adopt rules) and shall not be collected on waste being disposed of at the federal waste disposal facility.

Deletes existing text providing that fees under this section are required to be suspended when the amount of fees collected reaches \$500,000, except that if the balance of the fees collected is reduced to \$350,000 or less, the assessments are required to be reinstated to bring the balance of fees to \$500,000.

SECTION 3. Amends Section 401.109(a), Health and Safety Code, as follows:

(a) Requires DSHS, rather than DSHS or the Texas Commission on Environmental Quality (TCEQ), to deposit security provided to DSHS under this section to the credit of the perpetual care account. Requires DSHS, rather than DSHS and TCEQ, to by rule 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 must be made payable to the credit of the environmental radiation and perpetual care account.

SECTION 4. Amends Section 401.152, Health and Safety Code, as follows:

Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) Authorizes the agency, if DSHS or TCEQ, under procedures provided by Section 401.056 (Emergency Orders), finds that low-level radioactive waste under its jurisdiction threatens the public health and safety and the environment and that the license holder managing the low-level radioactive waste is unable to remove the threat, by order to require any action, including a corrective measure, that is necessary to remove the threat.

(b) Requires DSHS, rather than the agency, 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, 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 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 that are taken or that are to be taken under this section. 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 license holder, convert an amount of security into cash, as necessary, and disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

SECTION 5. Amends Section 401.2005, Health and Safety Code, by adding Subdivision (6-b) to define "operational year."

SECTION 6. Amends Section 401.202, Health and Safety Code, by adding Subsection (d), as follows:

(d) Provides that if TCEQ issues a compact waste disposal facility license that is later reversed or remanded to TCEQ by order of a court on procedural error, the TCEQ

executive director is authorized to 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 the procedural errors that are the basis for the remand have been resolved by TCEQ, and all terms and conditions of the license are required to remain in effect until the court determines in a final order that the procedural errors that are the basis for the remand have been resolved by TCEQ.

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

(d-1) Requires the compact waste disposal facility license holder, beginning in operational year three, to accept for disposal at the compact waste disposal facility nonparty compact waste that, if eligible for volume reduction, has been volume-reduced by at least a factor of three. Requires TCEQ to by rule establish requirements for ensuring that low-level radioactive waste has been subjected to volume reduction in a manner consistent with this subchapter. Requires TCEQ, prior to establishing requirements for volume reduction of any low-level radioactive waste, to first determine that there are competitive volume reduction technologies and companies in operation in the U.S. marketplace.

(e) Prohibits the compact waste disposal facility license holder from entering into contracts for the disposal of nonparty low-level radioactive waste that has been designated as Class A under 10 C.F.R. Section 61.55 and TCEQ rule, rather than prohibiting the compact waste disposal facility license holder from accepting more than 50,000 total cubic feet of nonparty compact waste annually. Prohibits the compact waste from accepting more than 300,000 curies of nonparty compact waste annually until April 26, 2019, rather than prohibiting the license holder 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.

(h) Requires that a surcharge collected under Subsection (g) (relating to requiring TCEQ to assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility) 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 8. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.2077, as follows:

Sec. 401.2077. COMPACT WASTE. (a) Requires the compact waste disposal facility license holder, to the greatest extent practicable, if a party state compact generator desires to export low-level radioactive waste described in this subsection, or a subset of such waste, to work with party state compact generators to support the export of low-level radioactive waste that has been designated as Class A under 10 C.F.R. Section 61.55 and TCEQ rule. Requires the Texas Low-Level Radioactive Waste Disposal Compact Commission (LLRWDC) to support this effort by granting export petitions for Class A waste as appropriate.

SECTION 9. Amends Section 401.218, Health and Safety Code, by adding Subsection (d), as follows:

(d) Requires modifications to waste forms, types, or streams allowed in the license by the executive director of TCEQ to be based on site-specific performance assessment and performance objectives as defined by TCEQ rule. Authorizes the executive director of TCEQ to adjust, correct, or otherwise modify the license on completion of the annual performance assessment. Provides that no amendment is required for licensing actions initiated by the executive director of TCEQ in response to the site-specific performance assessment or other studies.

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

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

(f) Requires TCEQ to adopt rules governing the executive director's review and approval of contract terms under this section.

(g) Authorizes a person affected by an action under this section to seek judicial review under Subchapter I (Judicial Review), Chapter 5, Water Code.

SECTION 11. Amends Section 401.301(d), Health and Safety Code, as follows:

(d) Requires, rather than authorizes, TCEQ and DSHS 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 DSHS to each by rule set the fee in an amount that is prohibited from exceeding the actual expenses annually incurred perform certain duties). Requires that fees collected under this subsection be deposited to the respective credit of the perpetual care accounts, rather than account.

SECTION 12. Amends Section 401.305, Health and Safety Code, as follows:

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT. (a) Makes no changes to this subsection.

(b) Requires DSHS, rather than DSHS and TCEQ, to deposit to the credit of the perpetual care account money and security it received, rather than they received, under this chapter, including an administrative penalty collected by DSHS 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) Section 401.301 (License and Registration Fees) but excluding fees collected under Section 401.301 (a)-(c), and Section 401.302 (Nuclear Reactor and Fixed Nuclear Facility Fee).

(c)-(e) Makes conforming changes.

SECTION 13. Amends Subchapter H, Chapter 401, Health and Safety Code, by adding Section 401.306, 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.

(b) Requires TCEQ to deposit to the credit of the environmental radiation and perpetual care account money and security received under this chapter, including fees collected under Sections 401.301(d) (relating to authorizing TCEQ and DSHS to require that each person who holds a specific license issued by the agency pay the agency an additional five percent of certain fees). Requires interest earned on money in the environmental radiation and perpetual care account to 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 (Payment for Maintenance, Surveillance, or Other Care).

(d) Prohibits money and security in the environmental radiation and perpetual care account from being used for the normal operating expenses of TCEQ.

(e) Authorizes TCEQ to use money in the environmental radiation and perpetual care account to pay for measures 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 TCEQ rules and 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 by TCEQ 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 TCEQ rules.

SECTION 14. Amends Subchapter H, Chapter 401, Health and Safety Code, by adding Section 401.307, as follows:

Sec. 401.307. RADIATION AND PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAP. (a) Requires fees imposed under Sections 401.301(d) and 401.052(d), and the surcharge collected under Section 401.207(h), and which are deposited to the credit of either the radiation and perpetual care account or the environmental radiation and perpetual care account to be suspended when the sum of the two accounts reaches \$150,000,000. Requires TCEQ and DSHS, if the balance of fees collected subsequently is reduced to \$75,000,000 or less, to reinstitute assessment of the fee until the balance reaches \$150,000,000.

(b) Requires the surcharge collected under Section 401.207(h) to continue to be collected regardless of whether the cap established in this subchapter is reached.

SECTION 15. Repealer: Section 401.052(d) (relating to certain fees assessed under this section), Health and Safety Code, as amended by Chapter 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003;

Repealer: Section 401.245(h) (relating to requiring the administrative law judge assigned to the contested case involving the adoption of certain fees under this section to issue a proposal for decision), Health and Safety Code;

Repealer: Section 401.2455(b) (relating to prohibiting granting an extension of the period during which interim rates apply), Health and Safety Code;

Repealer: Section 401.301(e) (relating to requiring TCEQ and DSHS to suspend assessment of certain fees), Health and Safety Code; and

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

SECTION 16. Requires TCEQ, as soon as practicable after the effective date of this Act, to adopt rules under Section 401.207(d-1), Health and Safety Code, as added by this Act.

SECTION 17. Requires TCEQ, as soon as practicable after the effective date of this Act, to adopt rules under Section 401.218(d), Health and Safety Code, as added by this Act.

SECTION 18. Requires TCEQ, as soon as is practicable after the effective date of this Act, and no later than one year after the adoption of this Act, to adopt rules under Section 401.2456(b), Health and Safety Code, as added by this Act.

SECTION 19. Requires TCEQ and DSHS, as soon as practicable after the effective date of this Act but no 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 20. Prohibits any contract for compact waste or nonparty compact waste that has been signed before the effective date of this Act from being effected by the changes in this Act.

SECTION 21. Effective date: September 1, 2013.