

By: Seliger

S.B. No. 791

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of low-level radioactive waste disposal facilities and radioactive substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 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].~~

1 SECTION 2. Subsection (a), Section 401.109, Health and
2 Safety Code, is amended to read as follows:

3 (a) The department or commission may require a holder of a
4 license issued by the agency to provide security acceptable to the
5 agency to assure performance of the license holder's obligations
6 under this chapter. The department [~~or commission~~] shall deposit
7 security provided to the department under this section to the
8 credit of the perpetual care account. The department [~~or~~
9 ~~commission~~] by rule shall provide that any evidence of security
10 must be made payable to the credit of the perpetual care account.
11 The commission shall deposit security provided to the commission
12 under this section to the credit of the environmental radiation and
13 perpetual care account. The commission shall provide that security
14 must be made payable to the credit of the environmental radiation
15 and perpetual care account.

16 SECTION 3. Section 401.152, Health and Safety Code, is
17 amended by amending Subsection (b) and adding Subsection (c) to
18 read as follows:

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

- 24 (1) enforce security supplied by the license holder;
25 (2) convert an amount of security into cash, as
26 necessary; and
27 (3) disburse from the security in the radiation and

1 perpetual care account the amount necessary to pay the costs.

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

7 (1) enforce security supplied by the license holder;

8 (2) convert an amount of security to cash, as
9 necessary; and

10 (3) disburse from the security in the environmental
11 radiation and perpetual care account the amount necessary to pay
12 the costs.

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

16 (d-1) Beginning September 1, 2015, the compact waste
17 disposal facility license holder may accept nonparty compact waste
18 for disposal at the facility only if the waste has been
19 volume-reduced, if eligible, by at least a factor of three. The
20 commission by rule shall establish requirements for ensuring that
21 low-level radioactive waste has been volume-reduced in a manner
22 consistent with this subchapter. Before establishing requirements
23 for volume reduction of low-level radioactive waste streams, the
24 commission must first determine that there are at least two
25 unaffiliated companies in operation in the United States
26 marketplace that offer low-level radioactive waste volume
27 reduction for each stream. In this subsection, "unaffiliated"

1 means not associated with one another as a subordinate, subsidiary,
2 or member.

3 (e) The compact waste disposal facility license holder may
4 not enter into a contract for the disposal of nonparty low-level
5 radioactive waste that has been designated as Class A low-level
6 radioactive waste under 10 C.F.R. Section 61.55 and commission rule
7 [accept more than 50,000 total cubic feet of nonparty compact waste
8 annually]. In the state fiscal year beginning September 1, 2013,
9 the [The] compact waste disposal facility license holder may not
10 accept more than 300,000 [120,000] curies of nonparty compact
11 waste. In the state fiscal years beginning September 1, 2014, and
12 September 1, 2015, [annually, except that in the first year] the
13 license holder may not accept more than 220,000 curies of nonparty
14 compact waste annually. In the state fiscal year beginning
15 September 1, 2016, the compact waste disposal facility license
16 holder may not accept more than 120,000 curies of nonparty compact
17 waste. The legislature by general law may establish revised limits
18 after considering the results of the study under Section 401.208.

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

22 SECTION 5. Subchapter F, Chapter 401, Health and Safety
23 Code, is amended by adding Section 401.2077 to read as follows:

24 Sec. 401.2077. CLASS A PARTY STATE COMPACT WASTE. To the
25 greatest extent practicable, if a party state compact waste
26 generator seeks to export low-level radioactive waste that has been
27 designated as Class A low-level radioactive waste under 10 C.F.R.

1 Section 61.55 and commission rule, or a subset of that waste, the
2 compact waste disposal facility license holder shall work with the
3 generator to support the export of the waste. The Texas Low-Level
4 Radioactive Waste Disposal Compact Commission shall grant export
5 petitions for Class A low-level radioactive waste from party state
6 compact waste generators as it finds appropriate.

7 SECTION 6. Section 401.208, Health and Safety Code, is
8 amended by amending Subsection (c) and adding Subsection (f) to
9 read as follows:

10 (c) Not later than December 1, 2016 [~~2012~~], the commission
11 shall submit a final report of the results of the study to the
12 standing committees of the senate and the house of representatives
13 with jurisdiction over the disposal of low-level radioactive waste.

14 (f) The commission, through the agency's internal audit,
15 shall conduct random audits of shipments to the site to ensure that
16 volumes, waste contents, and classifications are represented
17 accurately. The commission shall report these findings to the
18 legislature in the biennial report.

19 SECTION 7. Section 401.218, Health and Safety Code, is
20 amended by adding Subsection (d) to read as follows:

21 (d) The commission's executive director may adjust,
22 correct, or otherwise modify license condition 150 on completion of
23 an annual performance assessment. A modification by the executive
24 director to a license regarding a waste form, type, or stream must
25 be based on a site-specific performance assessment and objectives
26 as defined by commission rule and must be processed as a minor
27 amendment.

1 SECTION 8. Section 401.2456, Health and Safety Code, is
2 amended by amending Subsection (b) and adding Subsections (f) and
3 (g) to read as follows:

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

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

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

13 SECTION 9. Subsection (e), Section 401.249, Health and
14 Safety Code, is amended to read as follows:

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

19 SECTION 10. Subsection (d), Section 401.301, Health and
20 Safety Code, is amended to read as follows:

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

1 care account. The fees are not refundable.

2 SECTION 11. Subsection (g), Section 401.303, Health and
3 Safety Code, is amended to read as follows:

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

13 SECTION 12. Subsections (b), (c), (d), (e), (f), and (g),
14 Section 401.305, Health and Safety Code, are amended to read as
15 follows:

16 (b) The department [~~and commission each~~] shall deposit to
17 the credit of the perpetual care account money and security it
18 receives [~~they receive~~] under this chapter, including an
19 administrative penalty collected by the department under Sections
20 401.384-401.390 but excluding fees collected under Sections
21 401.301(a)-(c) and 401.302. Interest earned on money in the
22 perpetual care account shall be credited to the perpetual care
23 account.

24 (c) Money and security in the perpetual care account may be
25 administered by the department [~~or commission~~] only for storage,
26 maintenance, and distribution of mammography medical records or the
27 decontamination, decommissioning, stabilization, reclamation,

1 maintenance, surveillance, control, storage, and disposal of
2 radioactive substances for the protection of the public health and
3 safety and the environment under this chapter and for refunds under
4 Section 401.303.

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

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

10 (1) to prevent or mitigate the adverse effects of
11 abandonment of radioactive substances, default on a lawful
12 obligation, insolvency, or other inability by the holder of a
13 license issued by the department [~~or commission~~] to meet the
14 requirements of this chapter or of department [~~or commission~~]
15 rules;

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

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

22 (f) The department [~~or commission~~] may provide, by the terms
23 of a contract or lease entered into between the department [~~or~~
24 ~~commission~~] and any person, by the terms of a mammography
25 certification issued by the department [~~or commission~~] to any
26 person, or by the terms of a license issued to any person, for the
27 storage, maintenance, and distribution of mammography medical

1 records. The department [~~or commission~~] may provide, by the terms
2 of a contract or lease entered into between the department [~~or~~
3 ~~commission~~] and any person or by the terms of a license issued by
4 the department [~~or commission~~] to any person, for the
5 decontamination, closure, decommissioning, reclamation,
6 surveillance, or other care of a site or facility subject to
7 department [~~or commission~~] jurisdiction under this chapter as
8 needed to carry out the purpose of this chapter.

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

20 SECTION 13. Subchapter H, Chapter 401, Health and Safety
21 Code, is amended by adding Sections 401.306 and 401.307 to read as
22 follows:

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

26 (b) The commission shall deposit to the credit of the
27 environmental radiation and perpetual care account money and

1 security it receives under this chapter, including fees collected
2 under Section 401.301(d). Interest earned on money in the
3 environmental radiation and perpetual care account shall be
4 credited to the environmental radiation and perpetual care account.

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

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

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

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

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

24 (f) The commission may provide, by the terms of a contract
25 or lease entered into between the commission and any person, or by
26 the terms of a license issued to any person, for the
27 decontamination, closure, decommissioning, reclamation,

1 surveillance, or other care of a site or facility subject to
2 commission jurisdiction under this chapter as needed to carry out
3 the purposes of this chapter.

4 (g) The existence of the environmental radiation and
5 perpetual care account does not make the commission liable for the
6 costs of decontamination, transfer, transportation, reclamation,
7 surveillance, or disposal of radioactive substances arising from a
8 license holder's abandonment of radioactive substances, default on
9 a lawful obligation, insolvency, or inability to meet the
10 requirements of this chapter or of commission rules.

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

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

22 (c) Notwithstanding Subsection (a), a fee imposed by the
23 commission under Section 401.301(d) on the holder of a license
24 authorizing the extraction, processing, or concentration of
25 uranium or thorium from ore is suspended when the amount in the
26 environmental radiation and perpetual care account attributable to
27 those fees reaches \$2 million. If the amount in that account

1 attributable to those fees is reduced to \$1.5 million or less, the
2 fee is reinstated until the amount reaches \$2 million.

3 (d) Notwithstanding Subsection (a), a fee imposed under
4 Section 401.052(d) is suspended from imposition against a party
5 state compact waste generator when the amount in the perpetual care
6 account attributable to those fees reaches \$500,000. If the amount
7 in that account attributable to those fees is reduced to \$350,000 or
8 less, the fee is reinstated until the amount reaches \$500,000. The
9 costs of all clean-up associated with a transportation accident
10 will be borne by the generator of the product proportional to its
11 share of the load.

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

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

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

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

1 401.2456, Health and Safety Code, as added by this Act.

2 (c) As soon as practicable after the effective date of this
3 Act but not later than January 1, 2014, the Texas Commission on
4 Environmental Quality and the Department of State Health Services
5 shall update the portion of the memorandum of understanding between
6 the two agencies under Section 401.069, Health and Safety Code,
7 that governs each agency's role regarding the regulation and
8 oversight of radioactive materials and sources of radiation.

9 SECTION 16. The changes in law made by this Act apply only
10 to a contract for the disposal of compact waste or nonparty compact
11 waste that is signed on or after the effective date of this Act. A
12 contract signed before the effective date of this Act is governed by
13 the law in effect on the date the contract was signed, and the
14 former law is continued in effect for that purpose.

15 SECTION 17. This Act takes effect September 1, 2013.