

By: Seliger
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S.B. No. 791

Substitute the following for S.B. No. 791:

By: Lewis

C.S.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 Subsections (d-1), (d-2), and (e-1) and amending
15 Subsections (e) and (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. This subsection does not apply to Class B

1 or Class C resins.

2 (d-2) If volume reduction of a low-level radioactive waste
3 stream would result in a change of waste classification to a class
4 higher than Class C, the requirements of Subsection (d-1) do not
5 apply.

6 (e) The compact waste disposal facility license holder may
7 not enter into a contract for the disposal of nonparty low-level
8 radioactive waste that has been designated as Class A low-level
9 radioactive waste under 10 C.F.R. Section 61.55 and commission rule
10 unless the waste is containerized. The compact waste disposal
11 facility license holder may dispose of:

12 (1) not more than the greater of:

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

15 (B) an amount of nonparty compact waste equal to
16 30 percent of the initial licensed capacity of the facility; and

17 (2) not more than 275,000 curies of nonparty compact
18 waste in any fiscal year [~~accept more than 50,000 total cubic feet~~
19 ~~of nonparty compact waste annually. The compact waste disposal~~
20 ~~facility license holder may not accept more than 120,000 curies of~~
21 ~~nonparty compact waste annually, except that in the first year the~~
22 ~~license holder may accept 220,000 curies].~~

23 (e-1) The legislature by general law may establish revised
24 limits under Subsection (e) after considering the results of the
25 study under Section 401.208.

26 (h) A surcharge collected under Subsection (g) shall be
27 deposited to the credit of the environmental radiation and

1 perpetual care account [~~low-level radioactive waste fund~~].

2 SECTION 5. Section 401.208, Health and Safety Code, is
3 amended by amending Subsection (c) and adding Subsection (f) to
4 read as follows:

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

9 (f) The commission, through the agency's internal audit,
10 shall conduct random audits of shipments to the site to ensure that
11 volumes, waste contents, and classifications are represented
12 accurately. The commission shall report these findings to the
13 legislature in the biennial report.

14 SECTION 6. Section 401.218, Health and Safety Code, is
15 amended by adding Subsection (d) to read as follows:

16 (d) The commission's executive director may adjust,
17 correct, or otherwise modify license condition 143 on completion of
18 an annual performance assessment. A modification by the executive
19 director to a license regarding a waste form, type, or stream must
20 be based on a site-specific performance assessment and objectives
21 as defined by commission rule and must be processed as a minor
22 amendment.

23 SECTION 7. Section 401.2456, Health and Safety Code, is
24 amended by amending Subsection (b) and adding Subsections (f) and
25 (g) to read as follows:

26 (b) Rates and contract terms negotiated under this section
27 are subject to review and approval by the commission's executive

1 director to ensure they meet all of the requirements of this section
2 and the rules of the commission.

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

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

8 SECTION 8. Subsection (e), Section 401.249, Health and
9 Safety Code, is amended to read as follows:

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

14 SECTION 9. Subsection (d), Section 401.301, Health and
15 Safety Code, is amended to read as follows:

16 (d) The commission and department shall [~~may~~] require that
17 each person who holds a specific license issued by the agency pay to
18 the agency an additional five percent of the appropriate fee set
19 under Subsection (b). Fees collected by the department under this
20 subsection shall be deposited to the credit of the perpetual care
21 account. Fees collected by the commission under this subsection
22 shall be deposited to the environmental radiation and perpetual
23 care account. The fees are not refundable. The holder of a specific
24 license authorizing the extraction, processing, or concentration
25 of uranium or thorium from ore is not required to pay the additional
26 fee described by this subsection before the beginning of operations
27 under the license.

1 SECTION 10. Subsection (g), Section 401.303, Health and
2 Safety Code, is amended to read as follows:

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

12 SECTION 11. Subsections (b), (c), (d), (e), (f), and (g),
13 Section 401.305, Health and Safety Code, are amended to read as
14 follows:

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

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

1 radioactive substances for the protection of the public health and
2 safety and the environment under this chapter and for refunds under
3 Section 401.303.

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

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

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

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

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

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

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

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

19 SECTION 12. Subchapter H, Chapter 401, Health and Safety
20 Code, is amended by adding Sections 401.306 and 401.307 to read as
21 follows:

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

25 (b) The commission shall deposit to the credit of the
26 environmental radiation and perpetual care account money and
27 security it receives under this chapter, including fees collected

1 under Section 401.301(d).

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

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

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

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

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

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

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

8 Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL
9 RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed
10 under Sections 401.052(d) and 401.301(d) are suspended when the sum
11 of the balances of the perpetual care account and the environmental
12 radiation and perpetual care account reaches \$25 million. The fees
13 are reinstated when the sum of the balances of the perpetual care
14 account and the environmental radiation and perpetual care account
15 falls to \$12.5 million or less.

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

19 (c) Notwithstanding Subsection (a), a fee imposed by the
20 commission under Section 401.301(d) on the holder of a license
21 authorizing the extraction, processing, or concentration of
22 uranium or thorium from ore is suspended when the amount in the
23 environmental radiation and perpetual care account attributable to
24 those fees reaches \$2 million. If the amount in that account
25 attributable to those fees is reduced to \$1.5 million or less, the
26 fee is reinstated until the amount reaches \$2 million.

27 (d) Notwithstanding Subsection (a), a fee imposed under

1 Section 401.052(d) is suspended from imposition against a party
2 state compact waste generator when the amount in the perpetual care
3 account attributable to those fees reaches \$500,000. If the amount
4 in that account attributable to those fees is reduced to \$350,000 or
5 less, the fee is reinstated until the amount reaches \$500,000.

6 (e) This section does not affect the liability of a
7 generator for a transportation accident.

8 SECTION 13. The following sections of the Health and Safety
9 Code are repealed:

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

14 SECTION 14. (a) As soon as practicable after the effective
15 date of this Act, the Texas Commission on Environmental Quality
16 shall adopt rules to implement Subsection (d-1), Section 401.207,
17 and Subsection (d), Section 401.218, Health and Safety Code, as
18 added by this Act.

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

25 (c) As soon as practicable after the effective date of this
26 Act but not later than January 1, 2014, the Texas Commission on
27 Environmental Quality and the Department of State Health Services

1 shall update the portion of the memorandum of understanding between
2 the two agencies under Section 401.069, Health and Safety Code,
3 that governs each agency's role regarding the regulation and
4 oversight of radioactive materials and sources of radiation.

5 SECTION 15. The changes in law made by this Act apply only
6 to a contract for the disposal of compact waste or nonparty compact
7 waste that is signed on or after the effective date of this Act. A
8 contract signed before the effective date of this Act is governed by
9 the law in effect on the date the contract was signed, and the
10 former law is continued in effect for that purpose.

11 SECTION 16. This Act takes effect September 1, 2013.