

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. Subdivision (15), Section 401.003, Health and Safety Code, is amended to read as follows:

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a Texas county, or a Texas county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county in which nuclear or radioactive material is or will be located or in an adjacent Texas county.

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

(3) shall be used [~~exclusively~~] by the department for

1 emergency planning for and response to transportation accidents  
2 involving low-level radioactive waste, including first responder  
3 training in counties through which transportation routes are  
4 designated in accordance with Subsection (a) [~~and~~

5 [~~(4) shall be suspended when the amount of fees~~  
6 ~~collected reaches \$500,000, except that if the balance of the fees~~  
7 ~~collected is reduced to \$350,000 or less, the assessments shall be~~  
8 ~~reinstated to bring the balance of fees collected to \$500,000].~~

9 SECTION 3. Subsection (a), Section 401.109, Health and  
10 Safety Code, is amended to read as follows:

11 (a) The department or commission may require a holder of a  
12 license issued by the agency to provide security acceptable to the  
13 agency to assure performance of the license holder's obligations  
14 under this chapter. The department [~~or commission~~] shall deposit  
15 security provided to the department under this section to the  
16 credit of the perpetual care account. The department [~~or~~  
17 ~~commission~~] by rule shall provide that any evidence of security  
18 must be made payable to the credit of the perpetual care account.  
19 The commission shall deposit security provided to the commission  
20 under this section to the credit of the environmental radiation and  
21 perpetual care account. The commission by rule shall provide that  
22 any evidence of security must be made payable to the credit of the  
23 environmental radiation and perpetual care account.

24 SECTION 4. Section 401.152, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the  
27 [~~department or~~] commission, under procedures provided by Section

1 401.056, finds that low-level radioactive waste under its  
2 jurisdiction threatens the public health and safety and the  
3 environment and that the license holder managing the low-level  
4 radioactive waste is unable to remove the threat, the agency by  
5 order may require any action, including a corrective measure, that  
6 is necessary to remove the threat.

7 (b) The agency shall use the security provided by the  
8 license holder to pay the costs of actions that are taken or that  
9 are to be taken under this section. The agency shall send to the  
10 comptroller a copy of its order together with necessary written  
11 requests authorizing the comptroller to:

- 12 (1) enforce security supplied by the license holder;
- 13 (2) convert an amount of security into cash, as  
14 necessary; and
- 15 (3) disburse from the security in the environmental  
16 radiation and perpetual care account the amount necessary to pay  
17 the costs.

18 SECTION 5. Section 401.2005, Health and Safety Code, is  
19 amended by adding Subdivision (6-b) to read as follows:

20 (6-b) "Operational year" means the period from April 27 of  
21 one year through April 26 of the following year unless otherwise  
22 defined by the Texas Low-Level Radioactive Waste Disposal Compact  
23 Commission by rule.

24 SECTION 6. Section 401.202, Health and Safety Code, is  
25 amended by adding Subsection (d) to read as follows:

26 (d) If the commission issues a compact waste disposal  
27 facility license that is later reversed or remanded to the

1 commission by order of a court on procedural error:

2 (1) the commission's executive director may enter into  
3 a compliance agreement with the license holder authorizing  
4 continued operation of the disposal facility until the court  
5 determines in a final order that the procedural errors that are the  
6 basis for the remand have been resolved by the commission; and

7 (2) all terms and conditions of the license shall  
8 remain in effect until the court determines in a final order that  
9 the procedural errors that are the basis for the remand have been  
10 resolved by the commission.

11 SECTION 7. Subsection (a), Section 401.2051, Health and  
12 Safety Code, is amended to read as follows:

13 (a) The compact waste disposal facility license holder  
14 shall convey to the state at no cost to the state title to the  
15 compact waste delivered to the disposal facility for disposal at  
16 the time the waste is accepted at the site. Acceptance occurs when  
17 the acceptance criteria [~~specified in the license~~] have been  
18 satisfied. This section does not apply to federal facility waste  
19 accepted at a federal facility waste disposal facility.

20 SECTION 8. Section 401.207, Health and Safety Code, is  
21 amended by adding Subsection (d-1) and amending Subsection (e) to  
22 read as follows:

23 (d-1) Beginning in operational year three, the compact  
24 waste disposal facility license holder must accept for disposal at  
25 the compact waste disposal facility nonparty compact waste that, if  
26 eligible for volume reduction, has been volume-reduced by at least  
27 a factor of three. The commission by rule shall establish

1 requirements for ensuring that low-level radioactive waste has been  
2 subjected to volume reduction in a manner consistent with this  
3 subchapter.

4 (e) The compact waste disposal facility license holder may  
5 not accept from nonparty compact generators low-level radioactive  
6 waste that has been designated as Class A under 10 C.F.R. Section  
7 61.55 and 30 T.A.C. Section 336.362 [~~more than 50,000 total cubic~~  
8 ~~feet of nonparty compact waste annually~~]. The compact waste  
9 disposal facility license holder may not accept more than [~~120,000~~  
10 ~~curies of nonparty compact waste annually, except that in the first~~  
11 ~~year the license holder may accept~~] 220,000 curies of nonparty  
12 compact waste in an operational year. The legislature by general  
13 law may establish revised limits after considering the results of  
14 the study under Section 401.208.

15 SECTION 9. Subchapter F, Chapter 401, Health and Safety  
16 Code, is amended by adding Section 401.2077 to read as follows:

17 Sec. 401.2077. COMPACT WASTE. (a) To the greatest extent  
18 practicable, the compact waste disposal facility license holder  
19 shall work with party state compact generators to support the  
20 export of low-level radioactive waste that has been designated as  
21 Class A under 10 C.F.R. Section 61.55 and 30 T.A.C. Section 336.362.  
22 The Texas Low-Level Radioactive Waste Disposal Compact Commission  
23 shall support this effort by granting export petitions for Class A  
24 waste as appropriate.

25 (b) Not more than 50,000 cubic feet of party state compact  
26 waste may be disposed of in one operational year unless the Texas  
27 Low-Level Radioactive Waste Disposal Compact Commission grants an

1 exception.

2 SECTION 10. Section 401.218, Health and Safety Code, is  
3 amended by adding Subsection (d) to read as follows:

4 (d) Modifications to waste forms, types, or streams by the  
5 executive director of the commission shall be based on  
6 site-specific performance objectives as defined by commission  
7 rule. The executive director of the commission may adjust,  
8 correct, or otherwise modify the license on completion of the  
9 annual performance assessment or other studies. No amendment is  
10 required for licensing actions initiated by the executive director  
11 of the commission in response to the site-specific performance  
12 assessment or other studies.

13 SECTION 11. Section 401.2456, Health and Safety Code, is  
14 amended by amending Subsection (b) and adding Subsections (f) and  
15 (g) to read as follows:

16 (b) Rates and contract terms negotiated under this section  
17 are subject to review and approval by the commission's executive  
18 director to ensure they meet all of the requirements of this section  
19 and the rules of the commission.

20 (f) The commission shall adopt rules governing the  
21 executive director's review and approval of contract terms under  
22 this section.

23 (g) An action taken under this section is subject to  
24 judicial review under Subchapter I, Chapter 5, Water Code.

25 SECTION 12. Subsection (d), Section 401.301, Health and  
26 Safety Code, is amended to read as follows:

27 (d) The commission and department may require that each

1 person who holds a specific license issued by the agency pay to the  
2 agency an additional 10 [~~five~~] percent of the appropriate fee set  
3 under Subsection (b). Fees collected under this subsection shall  
4 be deposited to the credit of the perpetual care account. The fees  
5 are not refundable.

6 SECTION 13. Section 401.305, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT.

9 (a) The radiation and perpetual care account is an account in the  
10 general revenue fund.

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

19 (c) Money and security in the perpetual care account may be  
20 administered by the department [~~or commission~~] only for storage,  
21 maintenance, and distribution of mammography medical records or the  
22 decontamination, decommissioning, stabilization, reclamation,  
23 maintenance, surveillance, control, storage, and disposal of  
24 radioactive substances for the protection of the public health and  
25 safety and the environment under this chapter and for refunds under  
26 Section 401.303.

27 (d) Money and security in the perpetual care account may not

1 be used for normal operating expenses of the department [~~or~~  
2 ~~commission~~].

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

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

11 (2) to assure the protection of the public health and  
12 safety and the environment from the adverse effects of ionizing  
13 radiation; and

14 (3) to protect the health and safety of mammography  
15 patients by assuring mammography medical records are made available  
16 to affected patients.

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



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

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

15 SECTION 14. Subchapter H, Chapter 401, Health and Safety  
16 Code, is amended by adding Section 401.306 to read as follows:

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

20 (b) The commission shall deposit to the credit of the  
21 environmental radiation and perpetual care account money and  
22 security received under this chapter, including fees collected  
23 under Sections 401.301(d) and (g). Interest earned on money in the  
24 environmental radiation and perpetual care account shall be  
25 credited to the environmental radiation and perpetual care account.

26 (c) Money and security in the environmental radiation and  
27 perpetual care account may be administered by the commission only

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

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

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

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

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

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

26 (g) The existence of the environmental radiation and  
27 perpetual care account does not make the commission liable for the

1 costs of decontamination, transfer, transportation, reclamation,  
2 surveillance, or disposal of radioactive substances arising from a  
3 license holder's abandonment of radioactive substances, default on  
4 a lawful obligation, insolvency, or inability to meet the  
5 requirements of this chapter or commission rules.

6 SECTION 15. The following provisions of the Health and  
7 Safety Code are repealed:

8 (1) Subsection (d), Section 401.052, as amended by  
9 Chapter 1067 (H.B. 1567), Acts of the 78th Legislature, Regular  
10 Session, 2003;

11 (2) Subsection (h), Section 401.245;

12 (3) Subsection (b), Section 401.2455;

13 (4) Subsection (e), Section 401.301; and

14 (5) Section 403.0052.

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

19 SECTION 17. As soon as practicable after the effective date  
20 of this Act, the Texas Commission on Environmental Quality shall  
21 adopt rules under Subsection (d), Section 401.218, Health and  
22 Safety Code, as added by this Act.

23 SECTION 18. As soon as practicable after the effective date  
24 of this Act, the Texas Commission on Environmental Quality and the  
25 Department of State Health Services shall update the portion of the  
26 memorandum of understanding between the two agencies under Section  
27 401.069, Health and Safety Code, that governs each agency's role

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1 regarding the regulation and oversight of radioactive materials and  
2 sources of radiation.

3 SECTION 19. This Act takes effect September 1, 2013.