

1-1 By: Seliger S.B. No. 791
 1-2 (In the Senate - Filed February 25, 2013; March 5, 2013,
 1-3 read first time and referred to Committee on Natural Resources;
 1-4 April 8, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 2; April 8, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12		X		
1-13		X		
1-14			X	
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 791 By: Seliger

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the regulation of low-level radioactive waste disposal
 1-24 facilities and radioactive substances.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Subdivision (15), Section 401.003, Health and
 1-27 Safety Code, is amended to read as follows:

1-28 (15) "Person affected" means a person who demonstrates
 1-29 that the person has suffered or will suffer actual injury or
 1-30 economic damage and, if the person is not a local government:

1-31 (A) is a resident of a Texas county, or a Texas
 1-32 county adjacent to that county, in which nuclear or radioactive
 1-33 material is or will be located; or

1-34 (B) is doing business or has a legal interest in
 1-35 land in the county in which nuclear or radioactive material is
 1-36 disposed or in an adjacent Texas county.

1-37 SECTION 2. Subsection (d), Section 401.052, Health and
 1-38 Safety Code, as amended by Chapter 580 (H.B. 1678), Acts of the 78th
 1-39 Legislature, Regular Session, 2003, is amended to read as follows:

1-40 (d) Fees assessed under this section:

1-41 (1) may not exceed \$10 per cubic foot of shipped
 1-42 low-level radioactive waste;

1-43 (2) shall be collected by the department and deposited
 1-44 to the credit of the perpetual care account;

1-45 (3) shall be used [~~exclusively~~] by the department for
 1-46 emergency planning for and response to transportation accidents
 1-47 involving low-level radioactive waste, including first responder
 1-48 training in counties through which transportation routes are
 1-49 designated in accordance with Subsection (a); and

1-50 (4) shall not be collected on waste being disposed of
 1-51 at a federal facility waste disposal facility [~~shall be suspended~~
 1-52 when the amount of fees collected reaches \$500,000, except that if
 1-53 the balance of the fees collected is reduced to \$350,000 or less,
 1-54 the assessments shall be reinstated to bring the balance of fees
 1-55 collected to \$500,000].

1-56 SECTION 3. Subsection (a), Section 401.109, Health and
 1-57 Safety Code, is amended to read as follows:

1-58 (a) The department or commission may require a holder of a
 1-59 license issued by the agency to provide security acceptable to the
 1-60 agency to assure performance of the license holder's obligations

2-1 under this chapter. The department [~~or commission~~] shall deposit
 2-2 security provided to the department under this section to the
 2-3 credit of the perpetual care account. The department [~~or~~
 2-4 ~~commission~~] by rule shall provide that any evidence of security
 2-5 must be made payable to the credit of the perpetual care account.
 2-6 The commission shall deposit security provided to the commission
 2-7 under this section to the credit of the environmental radiation and
 2-8 perpetual care account. The commission shall provide that security
 2-9 must be made payable to the credit of the environmental radiation
 2-10 and perpetual care account.

2-11 SECTION 4. Section 401.152, Health and Safety Code, is
 2-12 amended to read as follows:

2-13 Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the
 2-14 department or commission, under procedures provided by Section
 2-15 401.056, finds that low-level radioactive waste under its
 2-16 jurisdiction threatens the public health and safety and the
 2-17 environment and that the license holder managing the low-level
 2-18 radioactive waste is unable to remove the threat, the agency by
 2-19 order may require any action, including a corrective measure, that
 2-20 is necessary to remove the threat.

2-21 (b) The department [~~agency~~] shall use the security provided
 2-22 by the license holder to pay the costs of actions that are taken or
 2-23 that are to be taken under this section. The department [~~agency~~]
 2-24 shall send to the comptroller a copy of its order together with
 2-25 necessary written requests authorizing the comptroller to:

- 2-26 (1) enforce security supplied by the license holder;
- 2-27 (2) convert an amount of security into cash, as
 2-28 necessary; and
- 2-29 (3) disburse from the security in the radiation and
 2-30 perpetual care account the amount necessary to pay the costs.

2-31 (c) The commission shall use the security provided by the
 2-32 license holder to pay the costs of actions that are taken or that
 2-33 are to be taken under this section. The commission shall send to
 2-34 the comptroller a copy of its order together with necessary written
 2-35 requests authorizing the comptroller to:

- 2-36 (1) enforce security supplied by the license holder;
- 2-37 (2) convert an amount of security into cash, as
 2-38 necessary; and
- 2-39 (3) disburse from the security in the environmental
 2-40 radiation and perpetual care account the amount necessary to pay
 2-41 the costs.

2-42 SECTION 5. Section 401.2005, Health and Safety Code, is
 2-43 amended by adding Subdivision (6-b) to read as follows:

2-44 (6-b) "Operational year" means the period from April 27 of
 2-45 one year through April 26 of the following year unless otherwise
 2-46 defined by the Texas Low-Level Radioactive Waste Disposal Compact
 2-47 Commission by rule.

2-48 SECTION 6. Section 401.202, Health and Safety Code, is
 2-49 amended by adding Subsection (d) to read as follows:

2-50 (d) If the commission issues a compact waste disposal
 2-51 facility license that is later reversed or remanded to the
 2-52 commission by order of a court on procedural error:

- 2-53 (1) the commission's executive director may enter into
 2-54 a compliance agreement with the license holder authorizing
 2-55 continued operation of the disposal facility until the court
 2-56 determines in a final order that the procedural errors that are the
 2-57 basis for the remand have been resolved by the commission; and
- 2-58 (2) all terms and conditions of the license shall
 2-59 remain in effect until the court determines in a final order that
 2-60 the procedural errors that are the basis for the remand have been
 2-61 resolved by the commission.

2-62 SECTION 7. Section 401.207, Health and Safety Code, is
 2-63 amended by adding Subsection (d-1) and amending Subsections (e) and
 2-64 (h) to read as follows:

2-65 (d-1) Beginning in operational year three, the compact
 2-66 waste disposal facility license holder must accept for disposal at
 2-67 the compact waste disposal facility nonparty compact waste that, if
 2-68 eligible for volume reduction, has been volume-reduced by at least
 2-69 a factor of three. The commission by rule shall establish

3-1 requirements for ensuring that low-level radioactive waste has been
 3-2 subjected to volume reduction in a manner consistent with this
 3-3 subchapter. Prior to establishing requirements for volume
 3-4 reduction of any low-level radioactive waste, the commission must
 3-5 first determine that there are competitive volume reduction
 3-6 technologies and companies in operation in the United States
 3-7 marketplace.

3-8 (e) The compact waste disposal facility license holder may
 3-9 not enter into contracts for the disposal of nonparty low-level
 3-10 radioactive waste that has been designated as Class A under 10
 3-11 C.F.R. Section 61.55 and commission rule [~~accept more than 50,000~~
 3-12 ~~total cubic feet of nonparty compact waste annually~~]. The compact
 3-13 waste disposal facility license holder may not accept more than
 3-14 300,000 [~~120,000 curies of nonparty compact waste annually, except~~
 3-15 ~~that in the first year the license holder may accept 220,000~~] curies
 3-16 of nonparty compact waste annually until April 26, 2019. The
 3-17 legislature by general law may establish revised limits after
 3-18 considering the results of the study under Section 401.208.

3-19 (h) A surcharge collected under Subsection (g) shall be
 3-20 deposited to the credit of the environmental radiation and
 3-21 perpetual care account [~~low-level radioactive waste fund~~].

3-22 SECTION 8. Subchapter F, Chapter 401, Health and Safety
 3-23 Code, is amended by adding Section 401.2077 to read as follows:

3-24 Sec. 401.2077. COMPACT WASTE. (a) To the greatest extent
 3-25 practicable, if a party state compact waste generator desires to
 3-26 export low-level radioactive waste described in this subsection, or
 3-27 a subset of such waste, the compact waste disposal facility license
 3-28 holder shall work with party state compact waste generators to
 3-29 support the export of the low-level radioactive waste that has been
 3-30 designated as Class A under 10 C.F.R. Section 61.55 and commission
 3-31 rule. The Texas Low-Level Radioactive Waste Disposal Compact
 3-32 Commission shall support this effort by granting export petitions
 3-33 for Class A waste as it finds appropriate.

3-34 SECTION 9. Section 401.218, Health and Safety Code, is
 3-35 amended by adding Subsection (d) to read as follows:

3-36 (d) Modifications to waste forms, types, or streams allowed
 3-37 in the license by the executive director of the commission shall be
 3-38 based on a site-specific performance assessment and performance
 3-39 objectives as defined by commission rule. The executive director
 3-40 of the commission may adjust, correct, or otherwise modify the
 3-41 license on completion of the annual performance assessment. No
 3-42 amendment is required for licensing actions initiated by the
 3-43 executive director of the commission in response to the
 3-44 site-specific performance assessment or other studies.

3-45 SECTION 10. Section 401.2456, Health and Safety Code, is
 3-46 amended by amending Subsection (b) and adding Subsections (f) and
 3-47 (g) to read as follows:

3-48 (b) Rates and contract terms negotiated under this section
 3-49 are subject to review and approval by the commission's executive
 3-50 director to ensure they meet all of the requirements of this section
 3-51 and the rules of the commission.

3-52 (f) The commission shall adopt rules governing the
 3-53 executive director's review and approval of contract terms under
 3-54 this section.

3-55 (g) A person affected by an action under this section may
 3-56 seek judicial review under Subchapter I, Chapter 5, Water Code.

3-57 SECTION 11. Subsection (d), Section 401.301, Health and
 3-58 Safety Code, is amended to read as follows:

3-59 (d) The commission and department shall [~~may~~] require that
 3-60 each person who holds a specific license issued by the agency pay to
 3-61 the agency an additional five percent of the appropriate fee set
 3-62 under Subsection (b). Fees collected under this subsection shall
 3-63 be deposited to the respective credit of the perpetual care
 3-64 accounts [~~account~~]. The fees are not refundable.

3-65 SECTION 12. Section 401.305, Health and Safety Code, is
 3-66 amended to read as follows:

3-67 Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT.

3-68 (a) The radiation and perpetual care account is an account in the
 3-69 general revenue fund.

4-1 (b) The department [~~and commission each~~] shall deposit to
 4-2 the credit of the perpetual care account money and security it
 4-3 received [~~they receive~~] under this chapter, including an
 4-4 administrative penalty collected by the department under Sections
 4-5 401.384-401.390 but excluding fees collected under Sections
 4-6 401.301(a)-(c) and 401.302. Interest earned on money in the
 4-7 perpetual care account shall be credited to the perpetual care
 4-8 account.

4-9 (c) Money and security in the perpetual care account may be
 4-10 administered by the department [~~or commission~~] only for storage,
 4-11 maintenance, and distribution of mammography medical records or the
 4-12 decontamination, decommissioning, stabilization, reclamation,
 4-13 maintenance, surveillance, control, storage, and disposal of
 4-14 radioactive substances for the protection of the public health and
 4-15 safety and the environment under this chapter and for refunds under
 4-16 Section 401.303.

4-17 (d) Money and security in the perpetual care account may not
 4-18 be used for normal operating expenses of the department [~~or~~
 4-19 ~~commission~~].

4-20 (e) The department [~~or commission~~] may use money in the
 4-21 perpetual care account to pay for measures:

4-22 (1) to prevent or mitigate the adverse effects of
 4-23 abandonment of radioactive substances, default on a lawful
 4-24 obligation, insolvency, or other inability by the holder of a
 4-25 license issued by the department [~~or commission~~] to meet the
 4-26 requirements of this chapter or of department [~~or commission~~]
 4-27 rules;

4-28 (2) to assure the protection of the public health and
 4-29 safety and the environment from the adverse effects of ionizing
 4-30 radiation; and

4-31 (3) to protect the health and safety of mammography
 4-32 patients by assuring mammography medical records are made available
 4-33 to affected patients.

4-34 (f) The department [~~or commission~~] may provide, by the terms
 4-35 of a contract or lease entered into between the department [~~or~~
 4-36 ~~commission~~] and any person, by the terms of a mammography
 4-37 certification issued by the department [~~or commission~~] to any
 4-38 person, or by the terms of a license issued to any person, for the
 4-39 storage, maintenance, and distribution of mammography medical
 4-40 records. The department [~~or commission~~] may provide, by the terms
 4-41 of a contract or lease entered into between the department [~~or~~
 4-42 ~~commission~~] and any person or by the terms of a license issued by
 4-43 the department [~~or commission~~] to any person, for the
 4-44 decontamination, closure, decommissioning, reclamation,
 4-45 surveillance, or other care of a site or facility subject to
 4-46 department [~~or commission~~] jurisdiction under this chapter as
 4-47 needed to carry out the purpose of this chapter.

4-48 (g) The existence of the perpetual care account does not
 4-49 make the department [~~or commission~~] liable for the costs of
 4-50 storage, maintenance, and distribution of mammography medical
 4-51 records arising from a mammography certification holder's failure
 4-52 to store, maintain, and make available mammography medical records
 4-53 or for the costs of decontamination, transfer, transportation,
 4-54 reclamation, surveillance, or disposal of radioactive substances
 4-55 arising from a license holder's abandonment of radioactive
 4-56 substances, default on a lawful obligation, insolvency, or
 4-57 inability to meet the requirements of this chapter or of department
 4-58 [~~or commission~~] rules.

4-59 SECTION 13. Subchapter H, Chapter 401, Health and Safety
 4-60 Code, is amended by adding Section 401.306 to read as follows:

4-61 Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE
 4-62 ACCOUNT. (a) The environmental radiation and perpetual care
 4-63 account is an account in the general revenue fund.

4-64 (b) The commission shall deposit to the credit of the
 4-65 environmental radiation and perpetual care account money and
 4-66 security received under this chapter, including fees collected
 4-67 under Section 401.301(d). Interest earned on money in the
 4-68 environmental radiation and perpetual care account shall be
 4-69 credited to the environmental radiation and perpetual care account.

5-1 (c) Money and security in the environmental radiation and
 5-2 perpetual care account may be administered by the commission only
 5-3 for the decontamination, decommissioning, stabilization,
 5-4 reclamation, maintenance, surveillance, control, storage, and
 5-5 disposal of radioactive substances for the protection of the public
 5-6 health and safety and the environment under this chapter and for
 5-7 refunds under Section 401.303.

5-8 (d) Money and security in the environmental radiation and
 5-9 perpetual care account may not be used for the normal operating
 5-10 expenses of the commission.

5-11 (e) The commission may use money in the environmental
 5-12 radiation and perpetual care account to pay for measures:

5-13 (1) to prevent or mitigate the adverse effects of
 5-14 abandonment of radioactive substances, default on a lawful
 5-15 obligation, insolvency, or other inability by the holder of a
 5-16 license issued by the commission to meet the requirements of this
 5-17 chapter or commission rules; and

5-18 (2) to ensure the protection of the public health and
 5-19 safety and the environment.

5-20 (f) The commission may provide, by the terms of a contract
 5-21 or lease entered into between the commission and any person or by
 5-22 the terms of a license issued by the commission to any person, for
 5-23 the decontamination, closure, decommissioning, reclamation,
 5-24 surveillance, or other care of a site or facility subject to
 5-25 commission jurisdiction under this chapter as needed to carry out
 5-26 the purposes of this chapter.

5-27 (g) The existence of the environmental radiation and
 5-28 perpetual care account does not make the commission liable for the
 5-29 costs of decontamination, transfer, transportation, reclamation,
 5-30 surveillance, or disposal of radioactive substances arising from a
 5-31 license holder's abandonment of radioactive substances, default on
 5-32 a lawful obligation, insolvency, or inability to meet the
 5-33 requirements of this chapter or commission rules.

5-34 SECTION 14. Subchapter H, Chapter 401, Health and Safety
 5-35 Code, is amended by adding Section 401.307 to read as follows:

5-36 Sec. 401.307. RADIATION AND PERPETUAL CARE ACCOUNT AND
 5-37 ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAP. (a) Fees
 5-38 imposed under Sections 401.301(d) and 401.052(d), and the surcharge
 5-39 collected under Section 401.207(h), and which are deposited to the
 5-40 credit of either the radiation and perpetual care account or the
 5-41 environmental radiation and perpetual care account shall be
 5-42 suspended when the sum of the two accounts reaches \$150 million. If
 5-43 the balance of fees collected subsequently is reduced to \$75
 5-44 million or less, the commission and department shall reinstitute
 5-45 assessment of the fees until the balance reaches \$150 million.

5-46 (b) The surcharge collected under Section 401.207(h) shall
 5-47 continue to be collected regardless of whether the cap established
 5-48 in this subchapter is reached.

5-49 SECTION 15. The following provisions of the Health and
 5-50 Safety Code are repealed:

5-51 (1) Subsection (d), Section 401.052, as amended by
 5-52 Chapter 1067 (H.B. 1567), Acts of the 78th Legislature, Regular
 5-53 Session, 2003;

5-54 (2) Subsection (h), Section 401.245;

5-55 (3) Subsection (b), Section 401.2455;

5-56 (4) Subsection (e), Section 401.301; and

5-57 (5) Section 403.0052.

5-58 SECTION 16. As soon as practicable after the effective date
 5-59 of this Act, the Texas Commission on Environmental Quality shall
 5-60 adopt rules under Subsection (d-1), Section 401.207, Health and
 5-61 Safety Code, as added by this Act.

5-62 SECTION 17. As soon as practicable after the effective date
 5-63 of this Act, the Texas Commission on Environmental Quality shall
 5-64 adopt rules under Subsection (d), Section 401.218, Health and
 5-65 Safety Code, as added by this Act.

5-66 SECTION 18. As soon as practicable after the effective date
 5-67 of this Act, and no later than one year after the effective date of
 5-68 this Act, the Texas Commission on Environmental Quality shall adopt
 5-69 rules under Subsection (b), Section 401.2456, Health and Safety

6-1 Code, as added by this Act.

6-2 SECTION 19. As soon as practicable after the effective date
6-3 of this Act but no later than January 1, 2014, the Texas Commission
6-4 on Environmental Quality and the Department of State Health
6-5 Services shall update the portion of the memorandum of
6-6 understanding between the two agencies under Section 401.069,
6-7 Health and Safety Code, that governs each agency's role regarding
6-8 the regulation and oversight of radioactive materials and sources
6-9 of radiation.

6-10 SECTION 20. Any contract for compact waste or nonparty
6-11 compact waste that has been signed before the effective date of this
6-12 Act shall not be affected by the changes in law made by this Act.

6-13 SECTION 21. This Act takes effect September 1, 2013.

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