

## **BILL ANALYSIS**

C.S.H.B. 2662  
By: Landgraf  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that regulatory frameworks for the proper disposal of low-level radioactive waste should be modified as needed in order to best serve the interests of the state and other interested entities. C.S.H.B. 2662 seeks to address this issue by making clarifications and other changes to the Texas Radiation Control Act and provisions relating to the Texas low-level radioactive waste disposal compact.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2662 amends the Health and Safety Code to remove the authority of a compact waste disposal facility license holder under the Texas Radiation Control Act to collect a fee and dispose of not more than the greater of either 1.167 million curies of nonparty compact waste or an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility and of not more than 275,000 curies of nonparty compact waste in any fiscal year. The bill establishes that provisions relating to out-of-state waste and nonparty compact waste expressly do not restrict or alter the authority of the Texas Low-Level Radioactive Waste Disposal Compact Commission under the act or under provisions relating to the Texas low-level radioactive waste disposal compact to review, approve, deny, or place conditions on the importation of nonparty compact waste to Texas. The bill repeals provisions that establish that a reference to the Code of Federal Regulations in the act means the Code of Federal Regulations as it existed on September 1, 1999, that authorize the compact waste disposal facility license holder to accept nonparty compact waste for disposal at the facility only under certain conditions, that authorize the Texas Commission on Environmental Quality (TCEQ) to assess a fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under provisions relating to out-of-state waste and nonparty compact waste, and that provide for certain allocation of the total initial licensed capacity of the compact waste disposal facility.

C.S.H.B. 2662 establishes a recurring deadline of at least once every four years for TCEQ to conduct the statutorily required study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste. The bill requires TCEQ to submit the first report under the recurring deadline schedule not later than December 1, 2020. The bill removes TCEQ's authority to license the compact waste

disposal facility license holder to dispose of federal facility waste and repeals provisions that relate to the capacity of the federal facility waste disposal facility, that prohibit the compact waste disposal facility license holder from accepting federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the compact waste disposal facility, and that relate to interim party state compact waste disposal fees.

C.S.H.B. 2662 requires a person who operates a disposal facility under the Texas low-level radioactive waste disposal compact to reserve disposal capacity in the amounts of four million cubic feet and three million curies for party state compact waste. The bill establishes that the reserved capacity and curies are immediately set aside for party state compact waste. The bill requires the Texas Low-Level Radioactive Waste Disposal Compact Commission, the operator, and TCEQ to ensure that the reservation is maintained until the completion of decommissioning of all the nuclear electric generation facilities in the party states and that 20 percent of the volume and curie capacity reserved for party states is allotted to compact waste generated in Vermont. The bill requires TCEQ to consider the disposal capacity reserved for party state compact waste as disposed for the purposes of operator licensing decisions based on storage capacity. The bill requires the operator to discontinue accepting waste from nonparty states when the compact facility reaches 80 percent of its as-built disposal capacity as measured by volume or curie, or when one of the party state nuclear electric generation facilities executes a contract for decommissioning, until construction is completed on a new disposal cell that provides at least an additional one million cubic feet of airspace capacity, as certified and stamped by a licensed engineer, or until the operator executes a performance bond or other instrument of financial assurance determined to be acceptable by TCEQ that is conditioned on the completion of a new disposal cell at the compact facility. The bill establishes that these provisions of the bill relating to compact facility capacity expressly do not restrict or alter the authority of TCEQ under the Texas Radiation Control Act to regulate the operator in accordance with license terms or agency rules, or restrict or alter the authority of the compact commission under the act or provisions relating to the Texas low-level radioactive waste disposal compact to review, approve, deny, or place conditions on the importation of nonparty compact waste to Texas.

C.S.H.B. 2662 repeals the following provisions of the Health and Safety Code:

- Section 401.005
- Sections 401.207(d-1), (d-2), (d-3), (e-1), and (f)
- Sections 401.216(b), (c), and (e)
- Section 401.2455

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2662 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 401.053, Health and Safety Code, is amended to read as follows: Sec. 401.053. CLASSIFICATION SYSTEM FOR LOW-LEVEL	No equivalent provision.

RADIOACTIVE WASTE. The department shall use the ~~[may establish a]~~ classification system for low-level radioactive waste that is established by the federal commission ~~[based on radiological, chemical, and biological characteristics and on physical state]~~ so that low-level radioactive waste can be managed safely and compatibly.

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

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. ~~The compact waste disposal facility license holder may, before September 1, 2027, collect a fee for and dispose of nonparty compact radioactive waste in an amount not to exceed:~~

~~(1) 2.75 million curies; or~~

~~(2) an amount greater than the amount under Subdivision (1) as specified by the license holder if the Texas Low-Level Radioactive Waste Disposal Compact Commission determines that the license holder has shown good cause for the greater amount, considering:~~

~~(A) the existing limits in the facility license, including radioactivity and volume limits in curies and cubic feet;~~

~~(B) the as-built disposal capacity available in the facility to party state generators;~~

~~(C) any expansion of the facility's disposal capacity that is actively under construction;~~

~~(D) the potential effects of the proposed limit increase on the performance assessment of the facility;~~

~~(E) the potential effects of the proposed limit increase on the health and safety of the employees; and~~

~~(F) any other factor considered relevant by the Texas Low-Level Radioactive Waste Disposal Compact Commission[;~~

~~[(1) not more than the greater of:~~

~~[(A) 1.167 million curies of nonparty compact waste; or~~

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

SECTION 1. Section 401.207, Health and Safety Code, is amended by amending Subsections (e) and (e-2) and adding Subsection (l) to read as follows:

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. ~~[The compact waste disposal facility license holder may collect a fee and dispose of:~~

~~[(1) not more than the greater of:~~

~~[(A) 1.167 million curies of nonparty compact waste; or~~

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

~~[(2) not more than 275,000 curies of nonparty compact waste in any fiscal year].~~  
(e-2) The commission's executive director, on completion of a ~~[the]~~ study under Section 401.208, may prohibit the license holder from ~~accepting any additional~~ nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, ~~regardless of whether the limit under Subsection (e) [(f)] has been reached.~~

(1) This section does not restrict or alter the authority of the Texas Low-Level Radioactive Waste Disposal Compact Commission under this chapter or Chapter 403 to approve the importation of nonparty compact waste to this state.

SECTION 3. Sections 401.208(a), (c), and (e), Health and Safety Code, are amended.

SECTION 4. Section 401.216(a), Health and Safety Code, is amended.

~~No equivalent provision.~~

SECTION 5. Chapter 403, Health and Safety Code, is amended by adding Section 403.0056 to read as follows:

Sec. 403.0056. COMPACT FACILITY CAPACITY. (a) In this section, "compact facility," "generator," "operator," and "party state" have the meanings assigned by Section 2.01, Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006 of this code).

(b) The operator shall reserve disposal capacity in the amounts of four million cubic feet and three million curies for party

~~[(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.]~~  
(e-2) The commission's executive director, on completion of a ~~[the]~~ study under Section 401.208, may prohibit the license holder from ~~continuing to accept [accepting any additional]~~ nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited~~[, regardless of whether the limit under Subsection (f) has been reached].~~

(1) This section does not restrict or alter the authority of the Texas Low-Level Radioactive Waste Disposal Compact Commission under this chapter or Chapter 403 to review, approve, deny, or place conditions on the importation of nonparty compact waste to this state.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Section 401.2456(c), Health and Safety Code, is amended to read as follows:

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than~~;~~  
~~as applicable:~~

~~[(1)] the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated~~;~~ or~~

~~[(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated].~~

SECTION 5. Chapter 403, Health and Safety Code, is amended by adding Section 403.0056 to read as follows:

Sec. 403.0056. COMPACT FACILITY CAPACITY. (a) In this section, "compact facility," "generator," "operator," and "party state" have the meanings assigned by the Texas Low-Level Radioactive Waste Disposal Compact.

(b) The operator shall reserve disposal capacity in the amounts of four million cubic feet and three million curies for party

state compact waste. The reserved capacity and curies are immediately set aside for party state compact waste. The commission and the Texas Commission on Environmental Quality shall ensure that:

(1) the reservation is maintained until the completion of decommissioning of all of the nuclear electric generation facilities in the party states; and

(2) 20 percent of the volume and curie capacity reserved for party states is allotted to compact waste generated in Vermont.

(c) For the purposes of operator licensing decisions based on storage capacity, the Texas Commission on Environmental Quality shall consider the disposal capacity reserved for party state compact waste under Subsection (b) as disposed.

(d) When the compact facility reaches 90 percent of its as-built disposal capacity as measured by volume or curie, the operator shall discontinue accepting waste from nonparty states until:

(1) construction is completed on a new disposal cell that provides a least an additional one million cubic feet of airspace capacity, as certified and stamped by an individual licensed as an engineer under Chapter 1001, Occupations Code; or

(2) the operator executes a performance bond or other instrument of financial assurance determined to be acceptable by the Texas Commission on Environmental Quality that is conditioned on the completion of a new disposal cell at the compact facility.

No equivalent provision.

SECTION 6. The following sections of the Health and Safety Code are repealed:

- (1) Section 401.005;
- (3) Sections 401.207(d-1), (d-2), (d-3), and

state compact waste. The reserved capacity and curies are immediately set aside for party state compact waste. The commission, the operator, and the Texas Commission on Environmental Quality shall ensure that:

(1) the reservation is maintained until the completion of decommissioning of all the nuclear electric generation facilities in the party states; and

(2) 20 percent of the volume and curie capacity reserved for party states is allotted to compact waste generated in Vermont.

(c) For the purposes of operator licensing decisions based on storage capacity, the Texas Commission on Environmental Quality shall consider the disposal capacity reserved for party state compact waste under Subsection (b) as disposed.

(d) When the compact facility reaches 80 percent of its as-built disposal capacity as measured by volume or curie, or when one of the party state nuclear electric generation facilities executes a contract for decommissioning, the operator shall discontinue accepting waste from nonparty states until:

(1) construction is completed on a new disposal cell that provides at least an additional one million cubic feet of airspace capacity, as certified and stamped by an individual licensed as an engineer under Chapter 1001, Occupations Code; or

(2) the operator executes a performance bond or other instrument of financial assurance determined to be acceptable by the Texas Commission on Environmental Quality that is conditioned on the completion of a new disposal cell at the compact facility.

(e) This section does not restrict or alter the authority of:

(1) the Texas Commission on Environmental Quality under Chapter 401 to regulate the operator in accordance with license terms or agency rules; or

(2) the commission under Chapter 401 or this chapter to review, approve, deny, or place conditions on the importation of nonparty compact waste to this state.

SECTION 6. The following sections of the Health and Safety Code are repealed:

- (1) Section 401.005;
- (2) Sections 401.207(d-1), (d-2), (d-3), (e-

- (f);
- (4) Sections 401.216(b), (c), and (e); and
- (5) Section 401.2455.

SECTION 7. The Texas Commission on Environmental Quality shall submit the first report required under Section 401.208, Health and Safety Code, as amended by this Act, not later than December 1, 2020.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

- 1), and (f);
- (3) Sections 401.216(b), (c), and (e); and
- (4) Section 401.2455.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.