

## **BILL ANALYSIS**

C.S.H.B. 2269  
By: Landgraf  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that, in compliance with the Texas Low-Level Radioactive Waste Disposal Compact, the state established a compact waste disposal facility that is run by a private operator. It has been suggested that the current fee model is unnecessarily expensive for waste generators and makes it difficult for the operator to make a profit and that problems could arise if the operator were to become insolvent. C.S.H.B. 2269 seeks to address this issue to enable the facility to more effectively compete in the free market by setting out provisions relating to the operations of the facility.

### **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. 2269 amends the Health and Safety Code to set out provisions relating to the operations of the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility. The bill reserves the following for the exclusive use of party state compact waste disposal in the facility:

- the greater of three million total cubic feet or the required volume identified by the Texas Commission on Environmental Quality (TCEQ) under a prescribed capacity study; and
- the greater of two million total curies or the required curie capacity identified by TCEQ under that capacity study.

Of the reserved volume and curie capacity, the bill reserves 80 percent for compact waste generated in the host state, which is the State of Texas, and 20 percent for compact waste generated in nonhost party states. The bill requires TCEQ to correct for radioactive decay in determining licensed disposal curie capacity in the compact waste disposal facility. The bill decreases the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the compact waste disposal facility from 20 percent of the total applicable contracted rate to five percent of that rate.

C.S.H.B. 2269 repeals provisions relating to the disposal of nonparty compact waste that:

- condition the authority of the compact waste disposal facility license holder to accept nonparty compact waste for disposal at the facility on the waste having been volume-reduced, if eligible, and on the license holder collecting a certain surcharge;

- establish limits on the authority of the license holder to collect certain fees or enter into contracts for the disposal of certain nonparty waste; and
- provide a certain allocation of the total initial licensed capacity of the compact waste disposal facility.

C.S.H.B. 2269 authorizes the compact waste disposal facility license holder to accept nonparty compact waste at the facility only if the waste is authorized by the compact commission and the facility has not less than three years' worth of constructed capacity based on the average amount of party state compact waste disposed in the preceding five years, excluding certain types of waste. The bill requires the license holder, in order to be permitted to accept nonparty compact waste if a compact waste disposal facility does not have sufficient constructed capacity, to add constructed capacity sufficient to meet applicable requirements or file and have approved by TCEQ a performance bond acceptable to TCEQ conditioned on the construction of additional constructed capacity sufficient to meet those requirements.

C.S.H.B. 2269 requires the license holder, if a nuclear electric generation facility in a party state has notified the U.S. Nuclear Regulatory Commission that the facility will be decommissioned and the time-phased decommissioning schedule and the Post-Shutdown Decommissioning Activities Report indicate that low-level radioactive waste is to be disposed of at the compact waste disposal facility, to have constructed adequate disposal capacity at the time of the disposal of waste from the decommissioning. The bill requires the license holder to obtain an amendment to the facility operating license to increase the allowable curie capacity by two million curies when the compact waste disposal facility has reached 80 percent of the total curies for which the facility is licensed.

C.S.H.B. 2269 requires the compact waste disposal facility license holder to conduct and provide to TCEQ an annual comparison of party state and nonparty state compact waste disposal fees and sets out criteria for the comparison. The bill requires the license holder, if the average compact waste disposal fee charged to party state generators exceeds the average compact waste disposal fee charged to nonparty state generators, to issue a rebate for the preceding year's fees to the party state generators in an amount sufficient to reduce the average compact waste disposal fee charged to party state generators after the rebate to \$1 less than the average compact waste disposal fee charged to nonparty state generators. The bill requires the license holder to allocate the rebate according to the fractional amount of the total compact waste disposal fees paid by each generator based on the license holder's records for the preceding year. The bill requires the license holder, not more often than once per year and on written request of a nuclear electric generation utility operating in a party state, to retain an independent auditor, who must be approved by the license holder and the utility making the request, to evaluate the computation of the average compact waste disposal fee and rebate. The bill requires the license holder, not later than the 30th day after the date the license holder receives the final audit report, to make a copy of the report available to the requesting utility, the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature with jurisdiction over environmental matters.

C.S.H.B. 2269 removes the requirement that five percent of a license holder's gross receipts received from disposal operations under a license issued by TCEQ under the Texas Radiation Control Act that authorizes the disposal of a radioactive substance from other persons be remitted to the comptroller of public accounts for deposit to the credit of the general revenue fund. The bill removes the exemption of compact waste and federal facility waste from the requirement to remit five percent of such gross receipts to the host county.

C.S.H.B. 2269 repeals the following:

- a requirement, set to take effect September 1, 2019, for the compact waste disposal facility license holder to transfer to the state general revenue fund five percent of the

gross receipts from compact waste received at the compact waste disposal facility and federal facility waste received at a federal facility waste disposal facility; and

- certain provisions relating to contracts for nonparty compact waste disposal.

C.S.H.B. 2269 repeals the following provisions of the Health and Safety Code:

- Sections 401.207(d-1), (d-2), (d-3), (e), (e-1), (f), and (h-1)
- Section 401.2445
- Sections 401.2456(b), (c), (d), and (e)

### **EFFECTIVE DATE**

September 1, 2019.

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

While C.S.H.B. 2269 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute makes technical corrections in provisions regarding the capacity reserved in the compact waste disposal facility for party state compact waste disposal.

The substitute does not include a provision removing the specification that the manner in which TCEQ certifies that nonparty compact waste is authorized for disposal at the compact waste disposal facility be through a written evaluation.

The substitute does not include an option for the compact waste disposal facility license holder to take an alternative action approved by a majority of the nuclear electric generation utilities operating in the party states in order to be permitted to accept nonparty compact waste if a compact waste disposal facility does not have applicable sufficient constructed capacity.

The substitute includes a requirement that the annual comparison of party state and nonparty state compact waste disposal fees conducted by the compact waste disposal facility license holder be provided to TCEQ. The substitute changes details relating to the requirement for the compact waste disposal facility license holder to retain an independent auditor to evaluate the computation of the average compact waste disposal fee and rebate and to make the final audit report available.

The substitute does not include the repeal of provisions relating to:

- a requirement for TCEQ to provide that the compact waste disposal facility license authorizes only the disposal of compact waste, except as provided by provisions relating to federal facility waste disposal;
- a conditional prohibition against the compact waste disposal facility license holder accepting additional nonparty compact waste based on the results of a certain study; and
- the amount of security that may be required of a compact waste disposal facility license holder at the time the facility site is decommissioned, the use of interest earned on the security, and the establishment of a schedule for the payment of the security.