

## **BILL ANALYSIS**

Senate Research Center  
86R11222 SLB-F

S.B. 1021  
By: Seliger  
Natural Resources & Economic Development  
3/25/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Low-Level Radioactive Waste Compact Agreement between Texas and Vermont established a low-level radioactive waste facility in Andrews, Texas. The facility is operated by a private operator. Economic restrictions placed on the facility by the legislature have caused the facility to perpetually lose money.

S.B. 1021 makes changes to current law to enable the facility to compete in the free market while preserving advantages for in-compact generators and maintaining the health and safety requirements.

As proposed, S.B. 1021 amends current law relating to the operations of the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Sections 401.2065 and 401.2066, as follows:

Sec. 401.2065. RESERVED CAPACITY FOR PARTY STATE WASTE. (a) Provides that the following are reserved for the exclusive use of party state compact waste disposal in the compact waste disposal facility:

(1) the greater of three million total cubic feet and the required volume identified by the Texas Commission on Environmental Quality (TCEQ) under Section 401.208 (Study of Capacity); and

(2) the greater of two million total curies and the required curie capacity identified by the TCEQ under Section 401.208.

(b) Provides that, of the reserved volume and curie capacity described by Subsection (a):

(1) 80 percent is reserved for compact waste generated in the host state; and

(2) 20 percent is reserved for compact waste generated in nonhost party states.

Sec. 401.2066. CORRECTION FOR DECAY IN DETERMINING CAPACITY. Requires TCEQ to correct for radioactive decay in determining licensed disposal curie capacity in a compact waste disposal facility under this subchapter (Special Provisions Concerning Low-Level Radioactive Waste Disposal).

SECTION 2. Amends Sections 401.207(d) and (g), Health and Safety Code, to require TCEQ, before the compact waste disposal facility license holder is authorized to accept nonparty compact waste for disposal, to certify rather than certify through a written evaluation, that the waste is authorized for disposal under the license.

SECTION 3. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.2075, as follows:

Sec. 401.2075. LIMITATION ON NONPARTY COMPACT WASTE. (a) Authorizes the compact waste disposal facility license holder to accept nonparty compact waste at the facility only if:

(1) the waste is authorized by the Texas Low-Level Radioactive Waste Disposal Compact Commission; and

(2) 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, not including:

(A) low-level radioactive waste from decommissioned nuclear electric generation facilities;

(B) oversized low-level radioactive waste components; or

(C) low-level radioactive waste from nonrecurring events.

(b) Requires the compact waste disposal facility license holder, if the compact waste disposal facility does not have sufficient constructed capacity as described by Subsection (a), in order to be permitted to accept nonparty compact waste, to:

(1) add constructed capacity sufficient to meet the requirements of Subsection (a);

(2) file and have approved by TCEQ a performance bond acceptable to TCEQ conditioned on the construction of additional constructed capacity sufficient to meet the requirements of Subsection (a); or

(3) take an alternative action approved by a majority of the nuclear electric generation utilities operating in the party states.

(c) Requires the compact waste disposal facility license holder, if a party state has notified the federal Nuclear Regulatory Commission that a nuclear electric generation facility located in the state 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.

(d) Requires the compact waste disposal facility 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.

SECTION 4. Amends Subchapter F, Chapter 401, Health and Safety Code, by adding Section 401.2465, as follows:

Sec. 401.2465. WASTE DISPOSAL FEE COMPARISON. (a) Requires the compact waste disposal facility license holder to conduct an annual comparison of party state and nonparty state compact waste disposal fees. Provides that the comparison:

(1) is required to include the total invoiced compact waste disposal fees, the total volume of compact waste disposed, and an average disposal fee calculated by dividing the total invoiced compact waste disposal fees by the total volume of compact waste disposed; and

(2) is prohibited from including information regarding disposal fees or disposal volume for low-level radioactive waste from decommissioned nuclear electric generation facilities, oversized low-level radioactive waste components, or low-level radioactive waste from nonrecurring events.

(b) Requires the compact waste disposal facility 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.

(c) Requires the compact waste disposal facility license holder to allocate the rebate issued under Subsection (b) according to the fractional amount of the total compact waste disposal fees paid by each generator based on the compact waste disposal facility license holder's records for the preceding year.

(d) Requires the compact waste disposal facility license holder, on written request of a nuclear electric generation utility operating in a party state, to:

(1) retain an independent auditor, who is required to be approved by the compact waste disposal facility license holder and the utility making the request, to evaluate the computation of the average compact waste disposal fee and rebate described by this section; and

(2) not later than the 90th day after the date the license holder receives the final audit report, make a copy of the report available to the requesting utility.

SECTION 5. Amends Sections 401.271(a) and (b), Health and Safety Code, as follows:

(a) Requires a holder of a license issued by TCEQ under this chapter that authorizes the disposal of a radioactive substance from other persons to remit each quarter an amount equal to five percent of the license holder's gross receipts received from disposal operations under the license to the host county in accordance with Sections 401.244(b) (relating to authoring the commissioner court of the host country to use the remitted money in a certain manner) and (d) (relating to providing that such money is not a loan or grant-in-aid subject to certain review), rather than to remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section to certain entities in certain amounts. Makes nonsubstantive changes.

(b) Provides that Subsection (a) does not apply to industrial solid waste as defined by Section 361.003 (Definitions), rather than to compact waste or federal facility waste as defined by Section 401.2005 (Definitions) or industrial solid waste as defined by Section 361.003.

SECTION 6. Repealer: Section 401.202(c) (relating to requiring TCEQ to provide that the compact waste disposal facility license authorizes only the disposal of compact waste), Health and Safety Code.

Repealer: Section 401.207(d-1) (relating to authorizing the compact waste disposal facility license holder to accept nonparty compact waste for disposal at the facility only under certain conditions), Health and Safety Code.

Repealer: Section 401.207(d-2) (relating to circumstances in which the payment of certain fees and compliances with other requirements do not apply), Health and Safety Code.

Repealer: Section 401.207(d-3) (relating to authorizing TCEQ to assess an additional fee on a nonparty compact waste generator for failing to comply with certain requirements), Health and Safety Code.

Repealer: Section 401.207(e) (relating to prohibiting the compact waste disposal facility license holder from taking certain actions regarding disposal of certain radioactive waste unless the waste is containerized), Health and Safety Code.

Repealer: Section 401.207(e-1) (relating to authorizing the legislature to establish revised limits after considering the results of a certain study), Health and Safety Code.

Repealer: Section 401.207(e-2) (relating to authorizing TCEQ's executive director to prohibit the license holder from accepting any additional nonparty compact waste following certain determinations), Health and Safety Code.

Repealer: Section 401.207(f) (relating to requirements concerning proportional allotment of capacity of the compact waste disposal facility), Health and Safety Code.

Repealer: Section 401.207(h-1) (relating to requiring TCEQ to conduct a study of a certain surcharge), Health and Safety Code.

Repealer: Section 401.241(b) (relating to certain requirements to ensure that the amount of security provided by the license holder is not below a certain threshold), Health and Safety Code.

Repealer: Section 401.2445 (State Fee), Health and Safety Code.

Section 401.2456(b) (relating to certain rates and contract terms subject to review and approval by TCEQ's executive director), Health and Safety Code.

Section 401.2456(c) (relating to requiring rates negotiated to be set both by a price per curie and a price per cubic foot), Health and Safety Code.

Section 401.2456(d) (relating to requiring a contract under this section to meet certain conditions), Health and Safety Code.

Section 401.2456(e) (relating to requiring rates set under this section to generate fees sufficient to meet certain criteria for party state compact waste), Health and Safety Code.

SECTION 7. Effective date: September 1, 2019.