

BILL ANALYSIS

C.S.H.B. 2692
By: Landgraf
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas is a party to an interstate compact for the disposal of low-level radioactive waste. Several concerns have been raised regarding the compact waste disposal facility in Andrews County, namely that the facility may be used for the interim storage of high-level radioactive waste such as spent nuclear fuel and that the facility may have become less economically viable since its creation due to changing market dynamics. C.S.H.B. 2692 seeks to address these concerns by prohibiting a person from disposing of or storing high-level radioactive waste or spent nuclear fuel in Texas, with certain exceptions, and by revising provisions relating to the compact waste disposal facility in an effort to help make it more economically viable.

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. 2692 amends the Health and Safety Code to revise and update provisions regulating the disposal of radioactive waste in Texas.

High-Level Radioactive Waste and Spent Nuclear Fuel

C.S.H.B. 2692 prohibits a person from disposing of or storing high-level radioactive waste or spent nuclear fuel in Texas as those terms are defined by certain federal law. The bill excepts from the prohibition storage at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors located on university campuses.

Compact Waste Disposal Facility

C.S.H.B. 2692 revises provisions relating to the disposal of waste in the compact waste disposal facility, which is the low-level radioactive waste disposal facility licensed by the Texas Commission on Environmental Quality (TCEQ) for purposes of the Texas Low-Level Radioactive Waste Disposal Compact.

Reserved Capacity for Party State Waste

C.S.H.B. 2692 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 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 facility.

C.S.H.B. 2692 clarifies the following:

- that availability of the required capacity does not affect the authority of TCEQ's executive director to prohibit the facility license holder from accepting any additional nonparty compact waste if TCEQ determines from the capacity study that the facility's capacity will be limited; and
- that the requirement for the facility to accept for disposal all compact waste that is presented to it and that is properly processed and packaged is subject to any exceptions provided by other applicable state law.

Disposal of Nonparty Compact Waste

C.S.H.B. 2692 decreases the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the facility from 20 percent of the total applicable contracted rate to five percent of that rate. The bill repeals obsolete requirements for TCEQ to conduct a study of the surcharge and issue the results of the review to the legislature.

C.S.H.B. 2692 repeals provisions relating to the disposal of nonparty compact waste that do the following:

- condition the authority of the 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 the applicable surcharge;
- establish that payment of the fee and compliance with the volume reduction requirements do not apply if volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C;
- authorize TCEQ to assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements;
- require certain waste to be containerized and establish limits on the amount of nonparty compact waste that the facility license holder may dispose of in a fiscal year and in total;
- authorize the legislature by general law to revise those limits after considering the results of the capacity study; and
- provide a certain allocation of the total initial licensed capacity of the facility.

C.S.H.B. 2692 authorizes the 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 facility in the preceding five years. The bill requires the license holder, in order to be permitted to accept nonparty compact waste if the facility does not have sufficient constructed capacity, to add constructed capacity sufficient to meet applicable requirements or file and have approved by TCEQ a bond acceptable to TCEQ conditioned on the construction of additional constructed capacity sufficient to meet those requirements.

C.S.H.B. 2692 requires the facility license holder, if a utility operating a nuclear electric generation facility in a party state has notified the U.S. Nuclear Regulatory Commission that the generation 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.

C.S.H.B. 2692 requires the facility license holder to obtain an amendment to the facility operating license to increase the allowable curie capacity by two million curies when the facility has reached 80 percent of the total curies for which the facility is licensed.

State Fee Reduction

C.S.H.B. 2692 removes the requirement that the facility license holder transfer quarterly to the state general revenue fund five percent of the gross receipts from compact waste received at the facility.

Review of Rates and Contract Terms

C.S.H.B. 2692 replaces the provision subjecting rates and contract terms for nonparty compact waste disposal to review and approval by the executive director of TCEQ to ensure the rates and terms meet all applicable requirements with a provision subjecting the rates and terms to periodic review by the executive director to ensure that the facility license holder's contracted rates and terms do not have a long-term, adverse effect on the cumulative surcharges paid to the host state and the host county. The bill repeals related provisions establishing rate and contract requirements.

Waste Disposal Fee Comparison and Rebate

C.S.H.B. 2692 requires the facility license holder to conduct 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 party state disposal fee exceeds the average nonparty state disposal fee, to issue a rebate for the preceding year's fees to the party state generators in an amount sufficient to reduce the average party state disposal fee after the rebate to \$1 less than the average nonparty state disposal fee. 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.

C.S.H.B. 2692 requires the license holder, on written request of a utility operating a nuclear electric generation facility in a party state but not more often than once per year, 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.

Repealers

C.S.H.B. 2692 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); and
- Sections 401.2456(c), (d), and (e).

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2692 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 does not include legislative findings relating to the Texas Low-Level Radioactive Waste Disposal Compact.

The substitute changes the exceptions to the bill's prohibition against disposing of or storing high-level radioactive waste or spent nuclear fuel in Texas from on-site storage by operating nuclear power reactors and operating nuclear test reactors located on university campuses to storage at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors located on university campuses.

The substitute changes the bill's effective date from September 1, 2021, to on passage unless the bill does not receive the necessary vote, in which case it is effective September 1, 2021.