

BILL ANALYSIS

Senate Research Center
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S.B. 1046
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Natural Resources & Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1993, the Texas Legislature entered into an interstate compact with Vermont for the disposal of low-level radioactive waste (LLRW). In compliance with the Texas Low-Level Radioactive Waste Compact Agreement, Texas established a low-level radioactive waste compact disposal facility (CWF) in Andrews, Texas. The state decided a private operator, rather than a state-run facility, was the preferred method to meet its legal obligations under the compact.

Pursuant to the compact, the compact waste disposal facility license holder, WCS (on behalf of Texas), constructed a state-of-the-art facility used to dispose of LLRW that is generated by essential components of the Texas economy including research institutions, the oil and gas industry, the healthcare industry, Texas nuclear power plants, the United States Department of Energy Pantex facility in Amarillo, and the State of Texas. Types of waste that are disposed of at the facility include: lab equipment, cleaning materials, personal protective equipment, sample residuals, downhole logging sources, naturally occurring radioactive material, filters, ion exchange resins, equipment that becomes radioactive, building debris, and contaminated soils.

The market for radioactive waste disposal has changed significantly since the original legislation was enacted, including improved waste minimization strategies and increased competition for radioactive waste disposal from other facilities. The CWF currently operates at a financial loss due to economic restrictions that are imposed by Texas statute. For the Texas compact waste disposal facility to remain economically viable, updates to the economic and competitive aspects of Texas legislation are needed.

S.B. 1046 makes changes in three areas—pricing, capacity, and taxes. The bill allows the CWF to achieve economic viability by competing in the free market, while ensuring the lowest prices for compact waste generators. It removes unnecessary disposal capacity reservations and restrictions, while preserving more than adequate capacity for compact waste generators. As well, it reduces surcharges to be competitive with other states.

S.B. 1046 also prohibits the disposal of high-level radioactive waste or spent nuclear fuel in the state, with the exception of on-site storage by operating nuclear power reactors and operating nuclear test reactors located on university campuses. This exception allows the Comanche Peak and the South Texas Project reactor facilities, The University of Texas, and Texas A&M University to continue to store radioactive materials on-site as is their current practice.

As proposed, S.B. 1046 amends current law relating to the regulation of radioactive waste; reduces a surcharge, and reduces a fee.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

ARTICLE 1. LEGISLATIVE FINDINGS

SECTION 1.01. DEFINITIONS. Defines "combined facility" and "compact" for purposes of this article.

SECTION 1.02. FINDINGS. Sets forth legislative findings relating to the development and operation of a low-level radioactive waste compact disposal facility in compliance with the Texas Low-Level Radioactive Waste Disposal Agreement.

ARTICLE 2. RADIOACTIVE WASTE

SECTION 2.01. Amends Section 401.205, Health and Safety Code, by adding Subsection (a-1), to define "high-level radioactive waste."

SECTION 2.02. 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, or 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, or the required curie capacity identified by TCEQ under Section 401.208.

(b) Provides that, of the reserved volume and curie capacity described by Subsection (a), 80 percent is reserved for compact waste generated in the host state, and 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 Subchapter F (Special Provisions Concerning Low-Level Radioactive Waste Disposal).

SECTION 2.03. Amends Sections 401.207(e-2) and (g), Health and Safety Code, as follows:

(e-2) Authorizes TCEQ's executive director, on completion of the study under Section 401.208, to prohibit the license holder from accepting any additional nonparty compact waste if TCEQ determines from the study that the capacity of the facility will be limited, regardless of whether the capacity required under Section 401.2065 is available, rather than whether the limit under Subsection (f) has been reached.

(g) Requires that TCEQ assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. Provides that the surcharge is five percent, rather than 20 percent, of the total contracted rate under Section 401.2456 (Contracts For Nonparty Compact Waste Disposal) and requires that it be assessed in addition to the total contracted rate under that section.

SECTION 2.04. 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 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 compact waste disposal facility in the preceding five years.

(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); or

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

(c) Requires the compact waste disposal facility license holder, if a utility operating a nuclear electric generation facility in a party state has notified the federal 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.

(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 2.05. Amends Section 401.215, Health and Safety Code, as follows:

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Requires the compact waste disposal facility, except as otherwise provided by this subchapter, rather than subject to limitations provided by Sections 401.207 (Out-of-State Waste; Nonparty Compact Waste) and 401.248 (Limitations on Low-Level Radioactive Waste Disposal), accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

SECTION 2.06. Amends Section 401.2445, Health and Safety Code, as follows:

Sec. 401.2445. STATE FEE. Deletes existing text requiring the compact waste disposal facility license holder each quarter to transfer to the state general revenue fund five percent of the gross receipts from compact waste received at the compact waste disposal facility. Makes nonsubstantive changes.

SECTION 2.07. Amends Section 401.2456(b), Health and Safety Code, as follows:

(b) Provides that rates and contract terms negotiated under this section are subject to periodic review, rather than subject to review and approval, by TCEQ's executive director to ensure that the compact waste 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, rather than to ensure they meet all of the requirements of this section.

SECTION 2.08. 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. Requires that the comparison include:

(1) an average party state disposal fee calculated by dividing the total invoiced party state compact waste disposal fees by the total volume of party state compact waste disposed; and

(2) an average nonparty state disposal fee calculated by dividing the total invoiced nonparty state compact waste disposal fees by the total volume of nonparty state compact waste disposed.

(b) Requires the compact waste disposal facility 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.

(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, not more often than once per year, on written request of a utility operating a nuclear electric generation facility in a party state to:

(1) retain an independent auditor, who must 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 30th day after the date the license holder receives the final audit report, 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.

SECTION 2.09. 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 if certain conditions are met), Health and Safety Code.

Repealer: Section 401.207(d-2) (relating to providing that, 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, the payment of the fee and compliance with other requirements of Subsection (d-1) 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 volume reduction requirements), Health and Safety Code).

Repealer: Section 401.207(e) (relating to prohibiting the compact waste disposal facility license holder from collecting a fee or entering into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under TCEQ rule unless the waste is containerized), Health and Safety Code.

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

Repealer: Section 401.207(f) (relating to the requirement that certain percentages of the total initial licensed capacity of the compact waste disposal facility be used for the host state and for party states), Health and Safety Code.

Repealer: Section 401.207(h-1) (relating to requiring that TCEQ conduct a study of the surcharge and issue the results of the review to the legislature), Health and Safety Code.

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

Repealer: Section 401.2456(d) (relating to requiring that a contract be negotiated in good faith, conform to applicable antitrust statutes and regulations, and be nondiscriminatory), Health and Safety Code.

Repealer: Section 401.2456(e) (relating to requiring that rates be set in an amount to generate fees sufficient to meet the criteria for party state compact waste), Health and Safety Code.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2021.