

By: Birdwell, Seliger

S.B. No. 1046

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of radioactive waste; reducing a surcharge; reducing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. LEGISLATIVE FINDINGS

SECTION 1.01. DEFINITIONS. In this article:

(1) "Combined facility" means the Texas compact waste disposal facility, the federal waste disposal facility, and the Resource Conservation and Recovery Act waste disposal facility in Andrews County, Texas.

(2) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact.

SECTION 1.02. FINDINGS. (a) Texas has entered into an interstate compact with Vermont for the disposal of low-level radioactive waste. The Texas Legislature passed the compact in 1993 (Chapter 460 (S.B. 1206), Acts of the 73rd Legislature, Regular Session, 1993). The United States Congress ratified the compact by passing the Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Pub. L. No. 105-236, in 1998. The compact remains federal law today.

(b) The compact mandates that Texas, as the host state, develop and operate a facility for the disposal of low-level radioactive waste generated within the party states. In exchange, party states (not including the host state) contributed \$25 million

1 to the host state.

2 (c) Under the compact, the compact waste disposal facility
3 license holder (on behalf of Texas) has constructed a
4 state-of-the-art facility for the safe and secure disposal of
5 low-level radioactive waste. The compact waste disposal facility
6 site in Andrews County, Texas, was selected due to its location on
7 top of a ridge of 600-foot thick red bed clay in a semiarid and
8 sparsely inhabited area of West Texas, with annual rainfall of less
9 than 16 inches. The combined facility features the most
10 environmentally protective designs in the industry, with
11 below-grade disposal in lined cells that are constructed inside a
12 natural 600-foot formation of almost impermeable Dockum red bed
13 clay. No significant erosion has taken place at the site for the
14 past 60,000 years and there is no reason to expect significant
15 erosion at the site during the next 60,000 years.

16 (d) The combined facility is used to dispose of low-level
17 radioactive waste that is generated by essential components of the
18 Texas economy and way of life, including:

19 (1) Texas' world-renowned research institutions,
20 including its institutions of higher education, which generate
21 radioactive items such as lab equipment, cleaning materials,
22 personal protective equipment, and sample residuals;

23 (2) the oil and gas industry, which generates
24 radioactive items such as downhole logging sources and naturally
25 occurring radioactive material from tank bottoms, filters, and pipe
26 scale;

27 (3) the health care industry, in both rural and urban

1 settings, which generates radioactive items such as lab equipment,
2 cleaning materials, personal protective equipment, and sample
3 residuals;

4 (4) the nuclear power plants located in Glen Rose and
5 Bay City, Texas, which generate radioactive items used for cleanup
6 of reactor water such as ion exchange resins and filters, personal
7 protective equipment, and various equipment that becomes
8 radioactive and that must be replaced or repaired;

9 (5) the United States Department of Energy, including
10 its Pantex facility in Amarillo, which generates radioactive
11 materials from current operations such as protective equipment and
12 which generated radioactive items from past operations such as
13 building debris and contaminated soils; and

14 (6) the State of Texas, including the Department of
15 State Health Services and the Texas Commission on Environmental
16 Quality.

17 (e) The compact waste disposal facility license holder and
18 this state have benefited, and anticipate continuing to benefit,
19 from operation of the existing compact waste disposal facility in
20 Texas.

21 (f) The market for radioactive waste disposal has changed
22 significantly since the original legislation for low-level
23 radioactive waste disposal in Texas was enacted, including improved
24 waste minimization strategies and increased competition for
25 radioactive waste disposal from other facilities including
26 Resource Conservation and Recovery Act disposal sites and municipal
27 landfills.

1 (g) For the Texas compact waste disposal facility to remain
2 economically viable, updates to the economic and competitive
3 aspects of Texas legislation are required.

4 ARTICLE 2. RADIOACTIVE WASTE

5 SECTION 2.01. Section 401.205, Health and Safety Code, is
6 amended by adding Subsection (a-1) to read as follows:

7 (a-1) In this subsection, "high-level radioactive waste"
8 has the meaning assigned by 42 U.S.C. Section 10101(12) and "spent
9 nuclear fuel" has the meaning assigned by 42 U.S.C. Section
10 10101(23). With the exception of on-site storage by operating
11 nuclear power reactors and operating nuclear test reactors located
12 on university campuses, a person, including the compact waste
13 disposal facility license holder, may not dispose of or store
14 high-level radioactive waste or spent nuclear fuel in this state.

15 SECTION 2.02. Subchapter F, Chapter 401, Health and Safety
16 Code, is amended by adding Sections 401.2065 and 401.2066 to read as
17 follows:

18 Sec. 401.2065. RESERVED CAPACITY FOR PARTY STATE WASTE.

19 (a) The following are reserved for the exclusive use of party state
20 compact waste disposal in the compact waste disposal facility:

21 (1) the greater of:

22 (A) three million total cubic feet; or

23 (B) the required volume identified by the
24 commission under Section 401.208; and

25 (2) the greater of:

26 (A) two million total curies; or

27 (B) the required curie capacity identified by the

1 commission under Section 401.208.

2 (b) Of the reserved volume and curie capacity described by
3 Subsection (a):

4 (1) 80 percent is reserved for compact waste generated
5 in the host state; and

6 (2) 20 percent is reserved for compact waste generated
7 in nonhost party states.

8 Sec. 401.2066. CORRECTION FOR DECAY IN DETERMINING
9 CAPACITY. The commission shall correct for radioactive decay in
10 determining licensed disposal curie capacity in a compact waste
11 disposal facility under this subchapter.

12 SECTION 2.03. Sections 401.207(e-2) and (g), Health and
13 Safety Code, are amended to read as follows:

14 (e-2) The commission's executive director, on completion of
15 the study under Section 401.208, may prohibit the license holder
16 from accepting any additional nonparty compact waste if the
17 commission determines from the study that the capacity of the
18 facility will be limited, regardless of whether the capacity
19 required [~~limit~~] under Section 401.2065 is available [~~Subsection~~
20 ~~(f) has been reached~~].

21 (g) The commission shall assess a surcharge for the disposal
22 of nonparty compact waste at the compact waste disposal facility.
23 The surcharge is five [~~20~~] percent of the total contracted rate
24 under Section 401.2456 and must be assessed in addition to the total
25 contracted rate under that section.

26 SECTION 2.04. Subchapter F, Chapter 401, Health and Safety
27 Code, is amended by adding Section 401.2075 to read as follows:

1 Sec. 401.2075. LIMITATION ON NONPARTY COMPACT WASTE. (a)

2 The compact waste disposal facility license holder may accept
3 nonparty compact waste at the facility only if:

4 (1) the waste is authorized by the compact commission;
5 and

6 (2) the facility has not less than three years' worth
7 of constructed capacity based on the average amount of party state
8 compact waste disposed in the compact waste disposal facility in
9 the preceding five years.

10 (b) If the compact waste disposal facility does not have
11 sufficient constructed capacity as described by Subsection (a), in
12 order to be permitted to accept nonparty compact waste, the compact
13 waste disposal facility license holder must:

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

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

20 (c) If a utility operating a nuclear electric generation
21 facility in a party state has notified the federal commission that
22 the facility will be decommissioned, and the time-phased
23 decommissioning schedule and the Post-Shutdown Decommissioning
24 Activities Report indicate that low-level radioactive waste is to
25 be disposed of at the compact waste disposal facility, the compact
26 waste disposal facility license holder must have constructed
27 adequate disposal capacity at the time of the disposal of waste from

1 the decommissioning.

2 (d) The compact waste disposal facility license holder must
3 obtain an amendment to the facility operating license to increase
4 the allowable curie capacity by two million curies when the compact
5 waste disposal facility has reached 80 percent of the total curies
6 for which the facility is licensed.

7 SECTION 2.05. Section 401.215, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE.
10 Except as otherwise provided by this subchapter [~~Subject to~~
11 ~~limitations provided by Sections 401.207 and 401.248~~], the compact
12 waste disposal facility shall accept for disposal all compact waste
13 that is presented to it and that is properly processed and packaged.

14 SECTION 2.06. Section 401.2445, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 401.2445. STATE FEE. The compact waste disposal
17 facility license holder each quarter shall transfer to the state
18 general revenue fund five percent of the gross receipts from[+

19 ~~(1) compact waste received at the compact waste~~
20 ~~disposal facility, and~~

21 ~~(2)] any federal facility waste received at a federal~~
22 facility waste disposal facility licensed under Section 401.216.

23 SECTION 2.07. Section 401.2456(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) Rates and contract terms negotiated under this section
26 are subject to periodic review [~~and approval~~] by the commission's
27 executive director to ensure that the compact waste facility

1 license holder's contracted rates and terms do not have a
2 long-term, adverse effect on the cumulative surcharges paid to the
3 host state and the host county [~~they meet all of the requirements of~~
4 ~~this section~~].

5 SECTION 2.08. Subchapter F, Chapter 401, Health and Safety
6 Code, is amended by adding Section 401.2465 to read as follows:

7 Sec. 401.2465. WASTE DISPOSAL FEE COMPARISON. (a) The
8 compact waste disposal facility license holder shall conduct an
9 annual comparison of party state and nonparty state compact waste
10 disposal fees. The comparison must include:

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

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

18 (b) If the average party state disposal fee exceeds the
19 average nonparty state disposal fee, the compact waste disposal
20 facility license holder must issue a rebate for the preceding
21 year's fees to the party state generators in an amount sufficient to
22 reduce the average party state disposal fee after the rebate to \$1
23 less than the average nonparty state disposal fee.

24 (c) The compact waste disposal facility license holder
25 shall allocate the rebate issued under Subsection (b) according to
26 the fractional amount of the total compact waste disposal fees paid
27 by each generator based on the compact waste disposal facility

1 license holder's records for the preceding year.

2 (d) Not more often than once per year, on written request of
3 a utility operating a nuclear electric generation facility in a
4 party state, the compact waste disposal facility license holder
5 shall:

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

11 (2) not later than the 30th day after the date the
12 license holder receives the final audit report, make a copy of the
13 report available to the requesting utility, the governor, the
14 lieutenant governor, the speaker of the house of representatives,
15 and each standing committee of the legislature with jurisdiction
16 over environmental matters.

17 SECTION 2.09. The following provisions of the Health and
18 Safety Code are repealed:

19 (1) Sections 401.207(d-1), (d-2), (d-3), (e), (e-1),
20 (f), and (h-1); and

21 (2) Sections 401.2456(c), (d), and (e).

22 ARTICLE 3. EFFECTIVE DATE

23 SECTION 3.01. This Act takes effect September 1, 2021.