

SUBJECT: Waiver of solid waste disposal permit for low-level radioactive waste site

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Jackson, Howard, Kuempel, Talton

0 nays

1 present, not voting — Dukes

3 absent — Saunders, Stiles, Yost

WITNESSES: For — None

Against — David Frederick, Sierra Blanca Legal Defense Fund; Les Breeding, Fund for Nuclear Responsibility; Erin Rogers, K. Liza Lovbe, Maria S. Lamon, Tashubi, Hart Gibson

On — Lee Matthews, Texas Low-Level Radioactive Waste Authority

BACKGROUND: Low-level radioactive waste (which includes materials contaminated with radiation in nuclear power plants, laboratories, industry and medical processes and research) must be disposed of either at state-built disposal facilities or through a compact with other states. The requirement is imposed by the federal Low-Level Radioactive Waste Policy Act of 1980.

Since January 30, 1994, Texas' waste must be stored at the many locations that produce it, including hospitals, utilities and universities. A disposal site in South Carolina was closed to Texas on June 30, 1994. The only other low-level radioactive waste dump of this kind currently operating in the United States is on the Hanford Reservation in Washington, and is now open only to 11 western and northwestern states.

The Texas Low-Level Radioactive Waste Authority (LLRWA) was created by the Texas Legislature in 1981 and commissioned to finance, construct, operate, and decommission a disposal site for low-level radioactive waste produced in Texas. The authority initially selected a site in Hudspeth County near Fort Hancock but a suit was filed by El Paso County,

Hudspeth County and other parties challenging the appropriateness of the site. In January 1991 State District Judge William Moody of El Paso declared the Fort Hancock site unsuitable and ordered work stopped.

In 1991 the 72nd Legislature required the authority to select another disposal site within a designated area in Hudspeth County. In February of 1992 the authority selected a site seven miles southeast of the town of Sierra Blanca, and began gathering data for a low-level radioactive waste license.

In 1993 the 73rd Legislature created the Texas Low-Level Radioactive Waste Disposal Compact, composed of the "host" state of Texas plus Maine and Vermont. The compact requires Texas to operate a facility to manage and dispose of low-level radioactive waste generated from the states in the compact. The states are required to help pay for operation of the facility plus disposal fees. The compact has not yet been ratified by Congress.

In 1994 the authority completed its license application to operate a low-level radioactive waste site. The Texas Natural Resource Conservation Commission (TNRCC) is reviewing the LLRWA application for a low-level radioactive waste license.

DIGEST:

CSHB 1775 would specify that issuance of a low-level radioactive waste disposal license by itself would authorize the Texas Low-Level Radioactive Waste Authority (LLRWA) to dispose of low-level radioactive waste. The LLRWA would be exempted from obtaining a solid waste disposal permit or other authorization under Health and Safety Code Chapter 361 unless the authority proposed to dispose of mixed waste, a combination of hazardous waste and low-level waste. The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSHB 1775 would reduce regulatory mandates that could delay the long-awaited start of the LLRWA site, authorized 10 years ago. It could take several additional years, and more state money, for the authority to obtain a solid waste permit under Health and Safety Code Chapter 361. The bill would eliminate this unnecessary requirement and let Texas go forward toward establishing its desperately needed repository for the disposal of low-level radioactive waste.

The current practice of using rooftops, parking lots, closets and other space at universities, hospitals and utilities to store radioactive waste is dangerous and could lead to loss of the waste by fire, theft or abandonment. This aboveground storage in every area of the state (including floodplains and on Texas barrier islands) is a threat to public health and safety. It is also enormously costly for waste generators like utility companies to store waste on site.

A license to store radioactive waste is difficult to obtain and requires rigorous scientific documentation and a long review process by TNRCC. The agency has up to 15 months to continue its review after the application for license is administratively complete. This ensures that the facility will be built and operated in a manner guaranteed to protect the public health and safety. The LLRWA disposal facility design was extensively reviewed and approved by scientists and engineers.

The LLRWA is already strictly regulated on both a state and federal level, including by Health and Safety Code Chapter 401, an intensive regulatory program written specifically with radioactive materials in mind. It is unnecessary to require the authority to also obtain solid and hazardous waste disposal licenses. The authority will not handle hazardous waste — only radioactive waste.

Some of the licensing requirements for solid waste are inconsistent with radioactive waste regulations. There is no reason, for example, for a low-level radioactive waste disposal facility to have a liner, which is a requirement for a hazardous waste facility. A liner is necessary for storing hazardous chemicals, which are often in liquid form, but liners are actually discouraged for low-level radioactive waste facilities by the federal Nuclear Regulatory Commission.

At the site in Sierra Blanca, no water can migrate offsite due to the climatic conditions and the depth of the water table. No liquid wastes will be accepted at the facility, and the waste accepted will be buried in massive, steel reinforced concrete canisters that are engineered to last for at least 500 years.

If Texas does not open a facility to store low-level radioactive waste soon, some industries that rely on radionuclides (used in life-saving medical procedures for example) will have to close down because they cannot afford to store the radioactive material they produce.

Some residents of Sierra Blanca do support the authority because they are convinced of its safety and welcome the economic development it will bring.

OPPONENTS
SAY:

Reducing regulation at the low-level radioactive waste site would endanger the health, safety and property rights of the public for no good reason. The majority of citizens from Sierra Blanca and the areas surrounding the dump are already opposed to the site. Instead of trying to reassure these citizens by taking every opportunity to ensure the safety of the site, CSHB 1776 would allow the authority to avoid current safety and regulatory measures governing dangerous waste products at the expense of property owners and residents who live near the site.

CSHB 1775 would leave the authority subject only to requirements for low-level waste, and eliminate further scrutiny of the technical information the authority supplied in its application for a low-level radioactive waste license. An independent consulting firm hired by a citizen's group critical of the authority is reviewing the LLRWA's license application, and has in its initial review found the license application to be poorly organized, poorly referenced and incomplete compared to similar license applications in other states.

The bill would allow the authority to be exempted from having to obtain permits for non-hazardous and municipal solid waste, which all other waste disposers must obtain. Radioactive waste poses a greater hazard to health and the environment than a landfill does, yet this bill would allow the authority to avoid any existing Health and Safety Code regulations that apply to landfills.

The authority may be called on to dispose of materials that are radioactive and are classified as solid waste, such as dead animals from hospital research that involved radionuclides. These animals should be stored in a facility that is lined (as Chapter 361 requires) because they can decompose

and carry the radioactivity into the earth or the water table. It is false to say that radioactive waste is separate from solid waste. All the material accepted by the authority would be either municipal or industrial solid waste that happens to also be radioactive in nature.

Any conflict between the low-level radioactive material and solid waste regulations could be resolved without eliminating needed regulation.

NOTES: The committee substitute revised the phrasing of the original bill.