

SUBJECT: Revising TNRCC and TDH regulation of radioactive materials

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Chisum, Jackson, Allen, Hirschi. Howard, Kuempel, Puente, Talton

0 nays

1 absent — Dukes

WITNESSES: For — None

Against — None

On — Richard Ratliff and Ruth McBurney, Texas Department of Health; Ric Jacobi, Texas Low-Level Radioactive Waste Authority

BACKGROUND : Texas Natural Resource Conservation Commission (TNRCC) regulates radioactive waste disposal and naturally occurring radioactive materials. The Texas Department of Health (TDH) regulates the use and handling of radioactive materials used mainly in medical and industrial applications. TDH also regulates storage and processing of radioactive waste.

DIGEST: CSHB 1426 would allow the Texas Department of Health (TDH) or the Texas Natural Resource Conservation Commission (TNRCC) to exempt a source of radiation, use, or user of radiation from certain agency rules if the exemption was not prohibited by law and would not result in an undue hazard to public health and safety, property or the environment.

The bill would prohibit a person from causing or allowing a violation of the statutes governing the control of radiation, and would provide that money from administrative penalties would be deposited in the Radiation and Perpetual Care Fund, rather than general revenue. The bill would also change references in the code from civil to administrative penalties in several sections of the Health and Safety Code.

The bill would add financial qualifications to a list of items that could be considered by TDA or TNRCC in making a determination on a licensing or enforcement action concerning radioactive materials. It would also repeal a section of the Health and Safety Code that provides that radioactive licenses cannot be issued or renewed unless the applicant can demonstrate to TDH or TNRCC that they are financially qualified to conduct the licensed activity.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

Allowing TDH and TNRCC to exempt certain regulated entities from agency rules if the exemption would not result in an undue hazard to public health and safety, property or the environment would allow the agencies that regulate sources of radiation and radioactive materials to be flexible when licensing new technologies in the radiation field. A number of new beneficial medical applications that use radioactive technology to diagnose certain conditions have emerged and should not be delayed or withheld because they conflict with archaic regulations that were developed before these new applications existed.

Establishing that it would be prohibited to cause or allow violations of the statutes governing the control of radiation would let agencies bring enforcement actions against both unlicensed individuals who break the law or help others to break the law.

The bill would change references from civil to administrative penalties in several sections of the Health and Safety Code. In the statutes, civil penalties are cited under a chapter entitled administrative penalties, leading to confusion over what is actually meant. Both TDH and TNRCC can already assess both civil and administrative penalties. CSHB 1426 would clarify the procedures used when assessing administrative penalties. It is important for the agencies to have clear guidance and authority for assessing administrative penalties. Administrative penalties allow greater flexibility in enforcement actions because they can be assessed directly by an agency while civil penalties generally must be brought by the attorney general by suit in district court.

Administrative penalties would be deposited in the radiation and perpetual care fund (RPCF), where they would be used to mitigate radiation contamination and dispose of impounded sources for the protection of public health and safety. The RPCF currently holds only financial security instruments that the agency requires of licensees as credit in case they default on their licensing.

CSHB 1426 would also provide for more effective regulation by state agencies by allowing financial qualifications to be considered when TDH or TNRCC are determining licensing or enforcement actions, but would remove a current burdensome requirement that radioactive licenses cannot be issued or renewed unless the applicant can demonstrate to TDH or TNRCC that they are financially qualified to conduct the licensed activity.

The TDH simply does not have the personnel or resources to ascertain the “financial qualifications” of every doctor, dentist or veterinarian who operates an x-ray machine in the state. Financial security would still be required of those possessing large amounts of radioactive material to make sure that the applicant had the resources to dispose of the material or decommission a facility if that became necessary due to bankruptcy or enforcement actions.

OPPONENTS
SAY:

No apparent opposition

NOTES:

The fiscal note estimates that implementing the bill would result a negative impact to general revenue of \$56,000 for the current biennium since administrative penalties would go into the radiation and perpetual care fund account rather than general revenue.

The original version of the bill was more extensive than the committee substitute, changing a number of definitions in the Radiation Control Act including the definition of radioactive waste, repealing four additional sections of act including those concerning the processing of out-of-state waste, and the low-level waste fund and making other changes regarding the regulation of radioactive waste.