

SUBJECT: Prohibiting low-level radioactive waste disposal without interstate compact

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Chisum, Jackson, Dukes, Hirschi, Puente, Talton

3 nays — Allen, Howard, Kuempel

WITNESSES: For — None

Against — None

On — Lee Matthews

BACKGROUND : In 1980, Congress enacted the Low-Level Radioactive Waste Policy Act requiring states to dispose of the low-level radioactive waste generated within their borders, other than waste generated by government facilities. The Texas Low-Level Radioactive Waste Authority (LLRWA) was created by the Texas Legislature in 1981 to finance, construct, operate and ultimately decommission a disposal site for low-level radioactive waste produced in Texas.

In 1991, the Legislature directed the LLRWA to select a site in Hudspeth County, and in 1992, the authority selected a site seven miles southeast of the town of Sierra Blanca. In 1994, the authority completed its license application for the site, and Texas Natural Resource Conservation Commission (TNRCC) is currently reviewing the application.

Federal law encourages states to join together to form compacts to create a single disposal site by authorizing states in compacts to refuse waste from other states. In 1993, the 73rd Legislature approved 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 waste generated from the states in the compact. Maine and Vermont would be required to help pay for the compact through disposal fees and together would contribute \$50 million to Texas for the project. Ratification of the compact, however, has been stalled in Congress.

The requirements for a compact laid out in sec. 402.218 of the Health and Safety Code include that other states in the compact share the cost of constructing a disposal site and join in any legal action involving liability at the site and any legal action necessary to prevent non-compact states from using the site and that the volume of waste from other states be limited to 20 percent of the annual average of low-level waste projected to be produced in the state from 1995 to 2045.

DIGEST: HB 2560 would prohibit a low-level radioactive waste disposal site from accepting low-level waste until an interstate compact had taken effect.

A compact would have to meet the requirements laid out in sec. 402.218 of the Health and Safety Code.

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

SUPPORTERS SAY: HB 2560 would make sure that no Texas facility could accept radioactive waste for disposal in the state unless an interstate compact were in effect. If Texas opens the first state-owned disposal site since enactment of the 1980 federal Low-Level Radioactive Waste Policy Act without a compact in place, it is likely to become the low-level radioactive waste dump for the entire nation. Only ratification of a compact would protect the state from having to accept waste from states outside the compact. If Texas were to construct and open the LLRWA site in Hudspeth County without a compact, a barrage of lawsuits would ensue, brought by other states desperately needing somewhere to put their waste. Legal experts agree that there is a good chance that Texas could lose in court and be forced to accept out-of-state waste.

Without a compact, even if the state were not forced to take out-of-state waste by legal action, it would lose the \$50 million that would come to the state from Maine and Vermont, the LLRWA site would begin to lose money, and the state would have to sell space in the dump to other states just to make ends meet. The case of the Barnwell dump in South Carolina, now open to 49 states, is instructive.

The bill would not cost the state anything. It is a mistaken assumption that even if a compact were not ratified, the Legislature would still appropriate money for construction of the site. In any case, HB 2560 would not interfere in any way with the ratification of the compact in Congress; it would merely ensure that if the compact were defeated, Texas would not become a dumping ground for the nation.

OPPONENTS
SAY:

HB 2560 is unnecessary to stop out-of-state waste from being dumped in Texas. Construction at the site cannot begin until the Legislature appropriates the money, so there is no chance that the site would begin accepting any waste at all — no matter where it was generated — before the next legislative session.

The bill could, however, interfere with congressional approval of the compact by implicitly tying disposal of waste at the Hudspeth site to ratification of the compact. Enacting HB 2560 could make the Hudspeth site itself the main point of contention rather than a discussion of the compact as a legal means to help Texas keep out waste from other states. It would be wiser to allow Congress to act on the compact without the distractions that HB 2560 could provide. If the compact is not ratified, the Legislature would have plenty of time in the next session to review the situation and even choose another site for low-level waste. Enactment of HB 2560 at this time, however, could jeopardize approval of the compact.

Even if a compact were not ratified, the state could structure a low-level waste facility in such a way that it could exclude waste from other states. Texas desperately needs a low-level waste facility. The current practice of storing waste in urban and residential areas in closets, sheds and storerooms at hospitals, universities and other locations is a risk to public health and safety. The state cannot continue to depend on others to take on its radioactive waste, and a point may come at which important medical research, therapy and other beneficial uses of radioactive materials have to be curtailed because of lack of disposal facilities.

If the compact is not ratified, it is still likely that the facility would be licensed and the Legislature would appropriate funds for construction, a move which would be supported by utilities that will have paid approximately \$50 million in implementation fees for the facility by 1999.

Under this scenario, according to the bill's fiscal note, once planning and implementation fees and fund balances in the Low-Level Radioactive Waste Account were depleted, as expected by the year 2000, there would be a loss of \$8.9 to \$15.6 million in waste disposal fees each year, which could not be collected if HB 2560 were enacted.

This would leave the authority without funding because utilities and other waste generators would no longer have to pay implementation fees once the authority was constructed; without a compact, \$50 million from Maine and Vermont would be lost, and disposal of waste, and thus also disposal fees, would be prohibited by HB 2560. An additional cost of approximately \$2 million a year would be needed to maintain the facility with a skeleton crew until it was operational.

NOTES:

A related bill, HB 2833 by Gallego, which would allow the LLRWA to sell, exchange, or donate property that was not part of a licensed disposal authority, passed the House on the Local and Consent Calendar on May 2, and has been referred to the Senate Natural Resources Committee.

The House version of HB 1 by Junell, the general appropriations bill, included no funding for the Low-Level Radioactive Waste Disposal Authority; the Senate version of HB 1 includes \$9.8 million for the authority for fiscal 1998-99.