

- SUBJECT:** Low-level radioactive waste disposal oversight, creation of new account
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 7 ayes — Harless, Isaac, Kacal, Lewis, Thompson, C. Turner, Villalba  
1 nays — Reynolds  
1 absent — Márquez
- SENATE VOTE:** On final passage, April 23 — 24-7 (Davis, Duncan, Garcia, Huffman, Lucio, Rodriguez, Watson)
- WITNESSES:** *(On House companion bill, HB 1653:)*  
For — Richard Dolgener, Andrews County; Bill Lindquist, Waste Control Specialists, LLC; *(Registered, but did not testify:* Stephen Minick, Texas Association of Business)  
  
Against — Karen Hadden, SEED Coalition; Marion Mlotok, Activate Austin; Marisa Perales, Lowerre Frederick Perales Allmon & Rockwell; Kaiba White, Public Citizen; *(Registered, but did not testify:* Matthew Haertner, Public Citizen; Casey Kelley, Exelon Corp.; Clay McKelvy, Public Citizen; Melanie Oldham; Scheleen Walker, Sierra Club Lone Star Chapter; David Weinberg, Texas League of Conservation Voters)  
  
On — *(Registered, but did not testify:* Victor Alcorta, Studsvik; Charles Maguire, Texas Commission on Environmental Quality; Richard Ratliff, Texas Department of State Health Services; Barbara Taylor, Department of State Health Services; Robert Wilson, Texas Low Level Radioactive Waste Disposal Compact Commission)
- BACKGROUND:** A three-state compact to dispose of low-level radioactive waste from Texas, Maine, and Vermont in Texas was approved by Congress in 1998, although Maine later withdrew after decommissioning its nuclear facility. Texas is the host state for the Texas Low-Level Radioactive Waste Disposal Compact with Vermont. It requires Texas to develop a facility for the disposal of low-level radioactive waste generated within the compact's party states.

In accordance with the compact and in compliance with state law, the Texas Commission on Environmental Quality (TCEQ) issued a license to Waste Control Specialists (WCS) to build and operate a facility for the disposal of low-level radioactive waste for the compact at the company's site in Andrews County. The disposal facility accepted its first shipment in April 2012.

Low-level radioactive waste falls under the jurisdiction of both Texas Department of State Health Service (DHS) and the Texas Commission on Environmental Quality (TCEQ). DHS regulates and licenses the use, transport, and storage of radioactive materials. TCEQ regulates the disposal of low-level radioactive waste and monitors the WCS facility in Andrews County for compliance with permit requirements.

Waste from non-compact parties generally means waste generated by a party located outside Texas or Vermont.

**DIGEST:**

CSSB 791 would, among other things, change the mix of radioactive substances collected at the state's low-level radioactive waste disposal site, add a new perpetual care account, and increase the caps on the accounts for depositing fees and surcharges. It also would allow the use of fees for training of first responders along routes used for transporting radioactive waste.

CSSB 791 would restructure the current radiation and perpetual care account and create a new account for fees and surcharges collected from the operator of the low-level radioactive disposal facility.

**Radiation and perpetual care account.** The existing radiation and perpetual care account would be for fees collected by and programs undertaken by DSHS.

**Environmental radiation and perpetual care account.** The environmental radiation and perpetual care account, a new general revenue account, would be for fees collected by and programs undertaken by the TCEQ.

Money and security in the environmental radiation and perpetual care account would be used by TCEQ for:

- the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment; and
- to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules.

The TCEQ could use its contracting authority for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction.

Money and security in the environmental radiation and perpetual care account could not be used for the TCEQ's normal operations.

The bill would provide that the existence of the environmental radiation and perpetual care account did not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

The TCEQ could not collect a fee for the environmental radiation and perpetual care account from a uranium or thorium mine until the mine began operations.

**Perpetual care account caps.** The bill would cap the cumulative amount of fees that could be collected under the two perpetual care accounts at \$25 million. The fees would be reinstated when the sum of the balances of the accounts fell to \$12.5 million or less. The surcharge would still be collected on waste coming from parties outside the compact regardless of the balances in the two accounts.

The fees charged uranium and thorium licensed mines would be suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reached \$2 million. If the amount in that account attributable to those fees was reduced to \$1.5 million or less, the fee would be reinstated until it reached \$2 million.

The bill would suspend the fee for a state compact party waste generator when the amount in the radiation and perpetual care account attributable to those fees reached \$500,000. If the amount in that account attributable to those fees was reduced to \$350,000 or less, the fee would be reinstated until the amount reached \$500,000.

**Non-compact waste.** Beginning on September 1, 2015 the compact waste disposal license holder could accept nonparty compact waste for disposal only if the waste had been reduced in volume by a one-third. TCEQ would establish rules to ensure that waste was volume-reduced. Before establishing requirements that a particular waste stream be volume reduced, the TCEQ would first determine that there were at least two unaffiliated U.S. companies that offered volume reduction for each waste stream. Class B and Class C resins would be exempted from the waste-reduction requirement.

The compact waste disposal facility license holder would be prohibited from accepting Class A low-level waste from non-compact states unless the waste had been containerized.

The waste disposal facility license holder could dispose of:

- not more than the greater of 1.167 million curies from states not party to the compact or an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and
- not more than 275,000 curies of waste from non-compact states in any fiscal year, compared with the current limit of no more than 50,000 total cubic feet of nonparty waste and no more than 120,000 curies after the first-year limit of 220,000 curies.

**Minor amendment.** The TCEQ executive director could, through minor amendment, modify the waste form, type, or stream based on a site-specific performance assessment and objectives defined by commission rule.

**Capacity study and audits.** The TCEQ would be required to perform a capacity study of the disposal facility no later than December 1, 2016.

The TCEQ would perform random audits of shipments to the site to ensure

that volumes, waste contents, and classifications of waste were accurately represented. The TCEQ would report the findings of the audits in its biennial legislative reports.

**Contract review.** The bill would require TCEQ to establish rules for the review and approval of the commission's executive director of contracts between the compact waste disposal waste facility license holder and third parties. Affected parties could seek judicial review.

**First responder training.** CSSB 791 would require the Department of State Health Services (DSHS) to use fees collected under existing statute for emergency planning for first responder training along transportation routes designated by the department.

**Repeals.** The bill would repeal the statute associated with the start-up of the licensed facility, the statute required to conform to the perpetual care accounts and account caps, and a reporting requirement already performed under the provisions of the compact.

**Memorandum of understanding.** TCEQ would be required to develop rules, as soon as practicable, to implement the bill's provision related to volume reduction of non-compact party waste and permit modification by the executive director. Within one year of the bill's effective date, TCEQ would have to develop rules implementing procedures for reviewing contracts. No later than January 1, 2014, the TCEQ and DSHS would have to update an existing memorandum of understanding between the agencies that governs each agency's role regarding oversight of radioactive materials.

**Effective date.** The bill would take effect September 1, 2013.

SUPPORTERS  
SAY:

**Future capacity.** CSSB 791 would strengthen the existing statute that limits the waste stream that could be disposed at the WCS site to 30 percent of non-compact party waste. The legislation is needed to modify disposal operations at the Texas Low Level Radioactive Waste Compact Facility in Andrews County based on a capacity report performed by TCEQ and the facility's projected future operations.

CSSB 791 would further ensure that 70 percent of the licensed capacity was reserved for low-level radioactive waste for the two compact states — Texas and Vermont. The strengthening of the 70 percent reservation

would guarantee that the facility remained operational until it was needed to decommission Texas' two nuclear power plants at Comanche Peak and Bay City.

**Perpetual care.** CSSB 791 would provide for two perpetual care funds and a \$25 million cap in fees. This would greatly increase the ability of both the DSHS and TCEQ to address the issues associated with low-level radioactive waste transportation, oversight, and decommissioning of the waste disposal facility well into the future. The bill would give each agency its own dedicated perpetual care fund to address the needs of that particular agency.

The bill would shift the majority of the cost for funding the state's perpetual care accounts to non-compact generators shipping waste to Texas. The bill would raise the cumulative perpetual care caps, for both the existing account and a newly created fund for TCEQ activities, to \$25 million. Current law provides for different caps, depending on the source of funds (penalties, surcharges, etc.). With the exception of caps related to fines and penalties, the existing caps do not exceed \$500,000, and only one of the four caps has reached its \$500,000 maximum.

While opponents may say the state's perpetual care accounts are insufficient, it is unfair to compare Texas low-level disposal site to the sites in other states. Texas' site is a state-of-the-art facility that ensures that waste is buried in a dry environment, below ground, protected in disposal casks and federally approved disposal containers. This is compared to other sites in the country where waste is stored above ground.

**License radiation limits.** The bill would not alter the total amount of radioactivity at the site, which is established in the TCEQ license and statute.

**TCEQ oversight.** CSSB 791 would strengthen TCEQ's oversight of the facility, requiring the agency to conduct random audits of waste arriving at the WCS facility, conducted under the authority of TCEQ's internal auditor, to ensure that the wastes were being accurately described as to type and quantity.

TCEQ has hundreds of water wells at the WCS site. Licensing requirements prohibit the disposal of waste when water is discovered, such as after a rain, or if water is present on a shipping container. Groundwater

is occasionally discovered, but these are isolated pockets of water not connected to aquifers.

The WCS site is one of the most monitored waste facilities in the world. TCEQ records regarding the site are available under the state's open records laws. In its rule making, the agency continually considers ongoing public input and will continue to do so well into the future, including in the new rulemaking that would be required by the bill.

**First responder training** The bill would give the DSHS a mandate and funding to train first responders throughout Texas who may encounter low-level waste in transport.

**Increased funding for the state and Andrews County.** CSSB 791 would increase the projected revenue coming to the state and Andrews County. In addition to the substantial fees funding the perpetual care accounts, the LBB's fiscal note states that the bill would have \$2.2 million positive general fiscal impact through the end of the biennium, and Andrews County would receive an equal amount.

**Transportation issues.** DSHS adopted the U.S. Department of Transportation rules for the transportation of radioactive material. These rules are restrictive, and transport of radioactive material has the best safety record of any other hazardous materials.

OPPONENTS  
SAY:

**Future capacity.** CSSB 791 would ensure future capacity but would do so partially by encouraging the diversion of less radioactive wastes to other states, leaving capacity in Texas for more dangerous radioactive waste. The bill would require TCEQ to perform a capacity review in 2016, but unless the agency pays attention to scientific advice, public comment, and requests for contested case hearings, it is inevitable that the state will conclude that the site can handle additional and more highly radioactive waste.

**License radiation limits.** The original purpose of Texas entering into a compact with other states was to lower the Texas' exposure to low-level radioactive waste. Instead Texas has perversely changed the goal of the compact to one of making money. The bill would encourage the diversion of Class A waste, the least dangerous and most bulky form of waste, away from the WCS facility to a site in Utah. In addition, the bill would allow for the more radioactive Class B and Class C waste to more rapidly fill the

disposal site. Thus, a site that was originally designed primarily for Class A wastes now would contain largely Class B and Class C wastes, which could continue to be radioactive well beyond the 500-year design of the disposal site.

**Perpetual care.** The \$25 million perpetual care fund limit in CSSB 791 would be significantly smaller and thus largely ineffective over time than the \$150 million fund limit provided by the Senate's version of the bill. This would mean that state was ill-prepared for failure at the site or a major transportation accident.

The account caps proposed also would leave the state ill-prepared when it was time to decommission the site. The state runs the real risk that the WCS securities in place for decommissioning of the low-level waste site may have little to no value at the time of decommissioning. The state experienced similar problems with the securities put in place for the decommissioning of uranium mines in the 1970s. When it came time to decommission the sites, the securities were largely worthless. The state needs to be prepared for this and have perpetual care funds large enough to address that contingency.

Despite groundwater pumping to ensure the site is dewatered, water continues to show up on the WCS site. The legislation fails to address the risk of water on the site becoming contaminated, and the perpetual care funds are insufficient to cover the costs of addressing groundwater contamination if it were to occur.

**TCEQ oversight.** TCEQ has a history of approving WCS requests. The public meeting and comment opportunities provided by minor amendment permit request are poor substitutes for contested case hearings.

Audits of waste streams should be moved out of TCEQ to the state auditor. This would help ensure that audits were not politicized.

**Increased funding for the state and Andrews County.** Both the state and Andrews County would gain funds in the near term because accelerating rates of waste being disposed would result in increased fees. However, the long-term costs of the site, if there is groundwater contamination or a major accident, could be extraordinarily costly. Experience has shown that clean-up costs have ranged from \$750 million to billions of dollars at other U.S. low-level waste facilities that have



leaked.

**Transportation issues.** It is unclear whether DSHS has designated transportation routes and protocols for low-level radioactive waste. The bill should require the agency to do so.

NOTES:

The Legislative Budget Board's fiscal note details a \$1.1 million gain to general revenue per year over the next five fiscal years. Andrews County would see a similar gain. The fiscal note recognizes a probable cost per year of about \$415,000 per year from the radiation and perpetual care account for first responder training, a probable gain to the radiation and perpetual care account of about \$465,000 per year, and a probable gain to the new environmental radiation perpetual care account, which would be created by the bill, of about \$9.3 million per year.

CSSB 791 differs from the Senate version in a number of ways, including:

- lowering the perpetual fund account limit from \$150 million to \$25 million;
- removing a provision that would have provided that interest earned by the environmental radiation and perpetual care account be credited to the account; and
- providing a different amount of non-compact party waste that can be received in a given year.