BILL ANALYSIS

Senate Research Center

C.S.H.B. 2665
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Natural Resources
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BACKGROUND

Chapter 402 of the Health and Safety Code, as amended, creates the Texas Low-Level Radioactive Waste Disposal Authority with the sole mission of locating, constructing, operating, financing, and closing a disposal site for low-level radioactive waste generated in Texas. The Authority's enabling statute sets out a detailed step-by-step plan for the Authority to follow in selecting a disposal site, beginning with statewide screening and then narrowing the search to one suitable site. The law further provides that once the Authority's board of directors finally selects a site, an application for a license to construct and operate a site must be submitted to the Texas Department of Health, which, if requested by an affected party, must hold a formal adjudicated hearing on all aspects of the application, including the siting process. Opponents and proponents to the proposed site are allowed to present evidence at the hearing, and the parties aggrieved by the Health Department's decision may appeal the decision through the court system.

In addition to complying with Chapter 402 of the Health and Safety Code, the Authority must also comply with the federal Low-Level Radioactive Waste Policy Act. That act sets out milestone dates by which each state or compact must develop its own low-level waste disposal site or make some other arrangement to dispose of its waste. If these milestones are not met, generators of low-level waste, such as hospitals, universities, and utility companies, face the prospect of large penalty surcharges on waste shipments to other states currently accepting our waste, and the real likelihood of having this access cut off, and the resulting necessity for providing expensive storage facilities to hold low-level waste until a Texas site is operational. If Texas does not have a site on line by January 1, 1996, waste generators can demand that the state take title to and responsibility for all their low-level waste. On the other hand, if the milestones are met, Texas will receive financial benefits.

Texas has met the federal milestones so far, and has preliminarily selected a disposal site near Fort Hancock, Hudspeth County, Texas. However, a pending lawsuit filed by El Paso County and others against the Authority in 1987 has slowed the progress of the siting process considerably. Despite the Authority's position that judicial review of the siting program is inappropriate until after the licensing decision of the Department of Health, an El Paso district judge ruled that further siting activities should cease. The appeal process could take as long as two additional years, and will put the State of Texas in jeopardy of missing the federal deadlines and incurring the additional costs and penalties to the waste generators. Additionally, a shutdown of activities and removal of equipment at the site during appeal will be very expensive and disruptive to the ongoing site study program.

PURPOSE

As proposed, C.S.H.B. 2665 requires law suits involving the Texas Low-Level Radioactive Waste Disposal Authority (authority), pertaining to site selection and licensing of a disposal facility within Hudspeth County, to be only brought in the courts of Travis County; requires certain actions relating to site selection or licensing of a disposal facility within Hudspeth County to be automatically suspended, upon the filing by the authority of a notice of appeal to a higher court challenging the action; prohibits any court other than the Texas Supreme Court from having any power to

affect the automatic suspension pending appeal in such a case; allows the authority to enter property to assess the suitability of the land for a disposal site; requires the authority's board of directors to select a site for a disposal facility within the boundaries of Hudspeth County, and gives the authority the power of eminent domain for acquiring land for the site.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 409.029, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires law suits involving the Texas Low-Level Radioactive Waste Disposal Authority (authority), pertaining to site selection and licensing of a disposal facility within Hudspeth County, to only be brought in courts of Travis County.

(c) Requires any judgement, injunction, declaration, or writ issued against the authority by a Texas court, other than the Texas Supreme Court, relating to site selection or licensing of a disposal facility within Hudspeth County, to be automatically suspended upon the filing by the authority of a notice of appeal to a higher court challenging the judgement, injunction, declaration, or writ. Prohibits any court other than the Texas Supreme Court from having any power to affect the automatic suspension pending appeal in such a case.

SECTION 2. Amends Chapter 402C, Health and Safety Code, by adding Section 402.059, as follows:

Sec. 402.059. POWER TO ENTER PROPERTY. (a) Allows the authority, and its employees, contractors, and agents to enter property to assess the suitability of the land for a disposal site.

(b) Requires the authority to notify the landowner of the nature of the entry, and to cooperate with the landowner to minimize inconvenience to the landowner.

(c) Provides that the authority is liable for damages to the land that result from the entry.

(d) Provides that this section applies to property located in the area of Hudspeth County specified in Section 402.0921 of this chapter.

SECTION 3. Amends Chapter 402D, Health and Safety Code, by adding Section 402.0921, as follows:

Sec. 402.0291. HUDSPETH COUNTY SITE. Requires the authority's board of directors to select a site for a disposal facility within the boundaries of Hudspeth County.

SECTION 4. Amends Chapter 402D, Health and Safety Code, by adding Section 402.0922, as follows:

Sec. 402.0922. EMINENT DOMAIN. Gives the authority the power of eminent domain for acquiring land for the Hudspeth County disposal site.

SECTION 5. Amends Section 402.152, Health and Safety Code, by creating Subsection (a) out of existing text, and adding Subsections (b), (c), and (d), as follows:

(b) Requires the authority to submit an application for the construction and operation of the Hudspeth County site to the appropriate state and federal agencies.

(c) Requires the authority to maintain field offices, and to conduct studies to provide information to support the license application.

(d) Requires the Texas Department of Health (department) to complete its review of the completeness and administrative sufficiency of the application within 30 days of the receipt of the application. Requires the authority to promptly respond to the department's request for additional documentation or information.

(e) Require the department to complete all activities associated with the review and processing of an application, and to give priority to the review of the application over all other radioactive materials and waste licensing and registration matters pending before the department.

SECTION 6. Effective date: September 1, 1991.

SECTION 7. Emergency clause.