

BILL ANALYSIS

Senate Research Center
78R7082 JTS-F

S.B. 824
By: Bivins
Natural Resources
3/21/2003
As Filed

DIGEST AND PURPOSE

As proposed, S.B. 824 defines unsuitable sites for the disposal of low-level radioactive waste; provides rules for the application process of disposing of such radioactive waste; requires certain procedures for waste disposal and conveyance; and requires certain levels of financial assurances sufficient to provide for the decommissioning and long term care of such facilities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is modified in SECTION 1 (Section 401.052, Health and Safety Code), SECTION 3 (Section 401.106, Health and Safety Code), SECTION 7 (Section 401.245, Health and Safety Code), and SECTION 9 (Section 401.301, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Health is modified in SECTION 2 (Section 401.104, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 5 (Section 401.224, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 401.052(c), (d), and (f), Health and Safety Code, as follows:

- (c) Requires the Texas Board of Health (board), in adopting rules under this section, to consult with the radiation advisory board (advisory board), rather than the Texas Commission on Environmental Quality(TCEQ).
- (d) Provides that fees assessed under Subsection (b)(5) follow certain guidelines.
- (f) Redefines “shipper” and deletes the definition for “authority.”

SECTION 2. Amends Section 401.104(b), Health and Safety Code, to require TCEQ by rule, except as provided by Subsection (e), to provide for licensing for the disposal of radioactive material except for the disposal of by-product material defined by Section 401.003(3)(B) and the disposal of low-level radioactive waste under Subchapter F. Requires the Texas Department of Health (TDH) by rule to provide for licensing the disposal of by-product material defined by Section 401.003(3)(B).

SECTION 3. Amends Section 401.106(a), Health and Safety Code, to authorize the board by rule or TDH on a case-by-case basis to exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter if the board or TDH finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

SECTION 4. Amends Section 401.153(b), Health and Safety Code, to prohibit a rule adopted under

this section from taking effect before the 24th month preceding the opening date of a low-level radioactive waste disposal site authorized under Subchapter F, rather than Chapter 402, and provides that the rule expires on the date the disposal site opens.

SECTION 5. Amends Chapter 401F, Health and Safety Code, as follows:

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE
WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. Defines “compact waste,” “disposal facility,” “federal facility waste,” “host state,” and “party state.”

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. Requires TDH, rather than TCEQ, to directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. Requires the person making the disposal to comply with this subchapter and TDH, rather than TCEQ, rules.

Sec. 401.202. LICENSING AUTHORITY. (a) Authorizes TDH, rather than TCEQ, to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) Requires TDH to receive applications for and to issue not more than one license for a low-level radioactive waste disposal facility. Authorizes TDH to issue the license only for a facility that meets certain criteria.

(c) Requires TDH, except as provided by Section 401.216, to provide that the disposal facility license authorizes only the disposal of compact waste.

Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. Deletes this section.

Sec. 401.204. ACQUISITION OF PROPERTY. Prohibits an application for a disposal facility license from being considered unless the applicant has acquired the title to and any interest in land and buildings as required by TDH, rather than TCEQ, rule.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) Makes nonsubstantive and conforming changes.

(b) Requires the disposal facility license holder, if authorized under Section 401.216 to dispose of federal facility waste, to perform certain actions.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) Requires the disposal facility license holder to convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Provides that this section does not apply to federal facility waste accepted at a disposal facility authorized under Section 401.216 to dispose of federal facility waste.

(b) Provides that the title and all related rights and interest in compact waste conveyed under this section are the property of TDH on the state's behalf. Authorizes TDH to administer the waste as property in the name of the state.

Sec. 401.206. RESIDENT INSPECTOR. Makes conforming changes.

Sec. 401.207. OUT-OF-STATE WASTE. Makes nonsubstantive and conforming changes.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE

WASTE DISPOSAL SITES. Makes conforming changes.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Requires low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter to be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Sec. 401.211. LIABILITY. (a) Provides that the transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission, rather than fraudulent or negligent acts, performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) Provides that the acceptance, storage, or disposal of low-level radioactive waste by the disposal facility license holder does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the low-level radioactive waste accepted, stored, or disposed of.

(c) Requires the low-level radioactive waste disposal facility license to require the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by TDH.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. Makes a conforming change.

Sec. 401.213. INTERSTATE COMPACTS. Makes a conforming change.

Sec. 401.214. REGIONAL DISPOSAL FACILITY. Provides that the disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act (LLRWPA), as amended by the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1985 (42 U.S.C. Sections 2021b-2021j).

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Requires the disposal facility, subject to limitations provided by Sections 401.207 and 401.245, to accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) Authorizes TDH to authorize the disposal facility license holder to dispose of federal facility waste. Authorizes TDH to authorize federal facility waste disposal only at a separate and distinct facility adjacent to the facility at which compact waste is disposed of.

(b) Authorizes TDH to restrict the amount and type of federal facility waste the license holder may accept at the separate adjacent facility. Requires the restrictions to be based on the performance objective established by 10 C.F.R. Section 61.41.

(c) Prohibits TDH from allowing commingling of compact waste and federal facility waste.

Sec. 401.217. LOCATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE. Prohibits TDH from issuing a license for a low-level radioactive waste disposal facility located in certain areas.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) Provides that in this section, "Class B low-level radioactive waste" and "Class C low-level radioactive waste" have the meanings assigned by TDH.

(b) Requires the disposal facility license holder to dispose of Class B low-level radioactive waste and Class C low-level radioactive waste according to certain guidelines.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) Requires an applicant, as a condition for obtaining a disposal facility license, to submit to TDH or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility.

(b) Requires an applicant, before determining the techniques to be used for managing low-level radioactive waste, to study alternative techniques, including waste processing and reduction at the site of waste generation and at the disposal facility and the use of aboveground isolation facilities.

Sec. 401.220. DESIGN OF FACILITY. Provides that the design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Sec. 401.221. MIXED WASTE. (a) Defines "mixed waste."

(b) Requires the disposal facility license holder in accepting mixed waste at the disposal facility to comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Sec. 401.222. TERM OF LICENSE. Provides that the disposal facility license issued under this subchapter expires on the 35th anniversary of its date of issuance.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. Requires TDH and local public health officials to develop a health surveillance survey for the population located in the vicinity of the disposal facility.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. Requires TDH to adopt rules relating to the packaging of radioactive waste.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the disposal facility license holder, on arrival of a shipment of low-level radioactive waste at the disposal facility, to determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the disposal facility.

(b) Requires a person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet to give the disposal facility license holder written notice of the shipment at least 72 hours before shipment to the disposal facility begins. Requires the written notice to contain information required by the board.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) Requires the disposal facility license holder, if low-level radioactive waste that is not properly processed or packaged arrives at the disposal facility, to properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) Requires the disposal facility license holder to report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the disposal facility low-level radioactive waste that is not properly processed or packaged.

Sec. 401.227. SELECTION OF APPLICATION FOR DISPOSAL FACILITY LICENSE.

(a) Requires TDH and the commissioner of public health (commissioner), in selecting an application for the disposal facility license, to proceed under certain guidelines.

(b) Requires the commissioner, if the selected application is rejected or denied by TDH, to select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Requires TDH, not later than October 1, 2003, to give to the secretary of state for publication in the Texas Register notice of certain information.

Sec. 401.229. COMMITMENT FEE. (a) Requires an application for a low-level radioactive waste disposal license to include payment to TDH of a commitment fee of \$500,000. Prohibits TDH from reviewing an application for administrative completeness until such receives the commitment fee. Provides that the commitment fee is nonrefundable.

(b) Requires the commitment fee, in the event that the application processing fees as determined by the commissioner exceed the amount of the commitment fee, to be credited by the commissioner to an applicant's payment of the application processing fees.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) Requires the department, for a 30-day period beginning 180 days after the date notice is published under Section 401.228, to accept applications for the disposal of low-level radioactive waste.

(b) Requires the commissioner, not later than the 45th day after the date an application is received, to issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commissioner to be administratively incomplete.

(c) Requires TDH to provide an applicant for whom an administrative notice of deficiency is issued not more than three opportunities to cure the noted deficiencies in the application not later than the 90th day after the date the first notice of deficiency is issued.

(d) Requires the commissioner to reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. Requires TDH to consider as administratively complete an application for which TDH has received the portions of the application necessary to allow the review of certain technical merits of the application.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSIONER SELECTION.

(a) Requires the commissioner to have prepared by TDH personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233-401.236.

(b) Requires the commissioner to conduct at least one public meeting in each county,

as applicable, to receive public comments on the administratively complete applications. Requires the commissioner to set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) Authorizes the commissioner to issue a request for further information to each applicant whose application is determined by the commissioner to be insufficient for the purposes of the commissioner's evaluation.

(d) Requires the commissioner to provide an applicant for whom a request for further information is issued two opportunities to adequately respond in the discretion of the commissioner not later than the 60th day after the date the request for further information is issued.

(e) Requires the commissioner to use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. Requires the commissioner to evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving equal weight to each criterion within a tier of criteria and the greatest weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Requires the commissioner, based on the written evaluations and application materials, to select the application that has the highest comparative merit.

Sec. 401.233. TIER 1 CRITERIA. (a) Requires the commissioner to consider as tier 1 certain criteria.

(b) Provides that there are certain natural characteristics of the disposal site.

(c) Provides that adequacy of the proposed disposal facility and activities include certain qualities.

(d) Provides that financial assurance include certain criteria.

Sec. 401.234. TIER 2 CRITERIA. Requires the commissioner to consider as tier 2 certain criteria.

Sec. 401.235. TIER 3 CRITERIA. Requires the commissioner to consider as tier 3 criteria certain qualities of the applicant.

Sec. 401.236. TIER 4 CRITERIA. Requires the commissioner to consider as tier 4 certain criteria.

Sec. 401.237. TECHNICAL REVIEW. (a) Requires TDH to begin a technical review of the selected application, immediately on the commissioner's selection of the application that has the highest comparative merit in accordance with Section 401.232.

(b) Requires the commissioner to complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) Requires TDH to give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before TDH.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. Requires the commissioner, on completion of the technical review of the selected application and preparation of the draft license, to publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. Requires the notice to include a statement that the draft license is available for review on the TDH website and that the draft license and the application materials are available for review at TDH and in the county in which a site for the proposed disposal facility is located. Requires notice to be published in the Texas register and in a newspaper of general circulation in each county in which a site for the proposed disposal facility is located. Requires the applicant to mail the notice by certified mail to each person who owns land adjacent to the site of the proposed disposal facility.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) Requires an administrative law judge of the State Office of Administrative Hearings (SOAH) to conduct a contested case hearing on the application and draft license under certain conditions.

(b) Prohibits the administrative law judge from admitting as a party to the contested case hearing a person other than the applicant, the commissioner, or a person affected.

(c) Prohibits TDH from referring an issue to SOAH for a hearing unless certain conditions exist.

(d) Requires TDH, if the such grants a request for a contested case hearing, to limit the number and scope of the issues to be referred to SOAH for a hearing and consistent with the nature and number of the issues to be considered at the hearing, specify the maximum expected duration of the hearing.

(e) Requires the administrative law judge to issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(f) Requires TDH to take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Sec. 401.240. JUDICIAL REVIEW. (a) Authorizes a person affected by an action of the commissioner or TDH under this subchapter, notwithstanding any other law, to file a petition for judicial review of the action only after TDH takes final action on a license application under Section 401.239(f). Requires a petition to be filed not later than the 30th day after the date of the final action.

(b) Prohibits a court, in its review of an action under this subchapter, from substituting its judgment for the judgment of the commissioner or TDH on the weight of the evidence the commissioner or TDH considered, but authorizes the court to affirm the action in whole or in part and requires the court to reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions fall under certain criteria.

SECTION 6. Amends Section 402.252, Health and Safety Code, by transferring it to Chapter 401F, Health and Safety Code, renumbering it as Section 401.241, and amending it, as follows:

Sec. 401.241. New heading: HOST COUNTY PUBLIC PROJECTS. (a) Requires the disposal facility license holder each quarter to transfer to the commissioners court of the host county 10 percent of the gross receipts from waste received at the disposal facility and any facility adjacent to the disposal facility that is authorized under Section 401.216 to receive

federal facility waste.

(b) Authorizes the commissioners court of the host county to perform certain acts, including spending money for public projects in the host county.

(c) Authorizes money received from the disposal facility license holder under this section to be spent only for public projects in the host county that are for the use and benefit of the public at large.

(d) Provides that funds received by the commissioners court of the host county under this section are not loans or grants-in-aid subject to review by a regional planning committee under Chapter 391, Local Government Code.

SECTION 7. Amends Section 402.219, Health and Safety Code, by transferring it to Chapter 401F, Health and Safety Code, renumbering it as Section 401.245, and amending it, as follows:

Sec. 401.245. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL.

(a) Authorizes a disposal facility, rather than a site, except as provided by an interstate compact, to accept only low-level radioactive waste that is generated in this state.

(b) Makes a conforming change.

(c) Makes conforming changes.

(d) Makes nonsubstantive changes.

(e) Makes nonsubstantive changes.

SECTION 8. Amends Sections 402.272, 402.273, and 402.276, Health and Safety Code, by transferring them to Chapter 401F, Health and Safety Code, renumbering them as Sections 401.242, 401.243, and 401.244, and amending them, as follows:

Sec. 401.242. WASTE DISPOSAL FEES. (a) Requires a disposal facility license holder who receives low-level radioactive waste for disposal pursuant to the TLLRWDC established under Chapter 403 to have collected a waste disposal fee to be paid by each person who delivers low-level radioactive waste to the facility for disposal.

(b) Requires an applicant for the disposal facility license to submit to TDH for review and approval in the application process a schedule of the proposed waste disposal fees it expects to collect under this section.

(c) Requires the disposal facility license holder to periodically revise waste disposal fees according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.243. Requires the disposal facility license holder, in determining relative hazard, to consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Authorizes the disposal facility license holder to request from TDH an amendment to its license as waste disposal fees are periodically revised.

Sec. 401.243. WASTE DISPOSAL FEE CRITERIA. Requires waste disposal fees collected by a disposal facility license holder who receives low-level radioactive waste for disposal pursuant to TLLRWDC established under Chapter 403 to be sufficient to perform

certain acts.

Sec. 401.244. New heading: REASONABLE AND NECESSARY EXPENSES. Provides that fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

SECTION 9. Amends Section 401.301(b), Health and Safety Code, to require the board by rule to set the fee in an amount that may not exceed the actual expenses annually incurred take certain actions. Deletes from the list of those actions the collection of payments to the low-level radioactive waste fund and general revenue as provided by Section 402.2721.

SECTION 10. Amends Section 403.001(a), Health and Safety Code, to make nonsubstantive changes. Requires one of the voting members of the compact commission to be a legal resident of the host county, rather than of Hudspeth County, Texas.

SECTION 11. Amends Section 51.0511, Natural Resources Code, to make a conforming change.

SECTION 12. Amends Section 5.013(a), Water Code, to make a conforming change.

SECTION 13. Repealer: Sections 401.153 (Processing of Out-of-State Low-Level Radioactive Waste) and 401.306 (Low-Level Radioactive Waste Fund), Health and Safety Code, and Chapter 402 (Low-Level Radioactive Waste Disposal Authority), Health and Safety Code.

SECTION 14. Effective date: September 1, 2003.