

BILL ANALYSIS

Senate Research Center
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S.B. 1667
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Natural Resources
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently there are two agencies regulating the disposal of radioactive waste, except oil and gas naturally occurring radioactive material (NORM) waste. In general, there is a lack of state revenue from the disposal of all types of radioactive waste.

As proposed, S.B. 1667 transfers jurisdiction over the disposal of all radioactive waste, except oil and gas NORM waste, to the Texas Commission on Environmental Quality (TCEQ). TCEQ currently has jurisdiction over low-level radioactive waste.

S.B. 1667 implements a fee on license holder gross receipts to be charged for the disposal of all radioactive waste, other than oil and gas NORM and low-level radioactive waste. These funds are to be deposited each calendar quarter to the general revenue fund.

S.B. 1667 also allows for a radioactivity surcharge to be collected from a license holder for the disposal of radioactive waste. This surcharge would not be applicable to the disposal of compact low-level radioactive waste. The amount of revenue collected from this surcharge would be deposited each calendar quarter into the general revenue fund.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4 (Section 401.106, Health and Safety Code), SECTION 11 (Section 401.116, Health and Safety Code), SECTION 26 (Section 401.414, Health and Safety Code), and SECTION 28 (Section 401.452, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 3 (Section 401.104, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 26 (Section 401.414, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 7 (Section 401.111, Health and Safety Code) and SECTION 8 (Section 401.112, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is transferred to the Texas Commission on Environmental Quality in SECTION 16 (Section 401.263, Health and Safety Code), and SECTION 19 (Section 401.266, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission in SECTION 26 (Section 401.414, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 3 (Section 401.104, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 26 (Section 401.414, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 401.003(2), (4), (5), and (6), Health and Safety Code, to redefine "board," "commission," "commissioner," and "department."

SECTION 2. Amends Sections 401.011(a) and (b), Health and Safety Code, as follows:

(a) Creates an exception, as provided by Subchapters E and G, to the rule that the Texas Radiation Control Agency has jurisdiction over activities and substances regulated under this chapter.

(b) Provides that the Texas Commission on Environmental Quality (TCEQ) has jurisdiction to regulate and license, among other things, the processing or storage of certain radioactive waste, the recovery or processing of source material, the processing of by-product material, and sites for the disposal of certain radioactive waste and by-product material. Deletes the exception to the authority to license for the disposal of by-product material.

SECTION 3. Amends Section 401.104(b), Health and Safety Code, to delete the exception for the disposal of by-product material to the provision that TCEQ is required to provide for licensing for the disposal of radioactive material. Deletes existing text requiring the Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission (department), by rule, to provide for licensing of by-product material.

SECTION 4. Amends Section 401.106(a), Health and Safety Code, to authorize the executive commissioner of the Health and Human Services Commission (executive commissioner) and TCEQ, rather than executive commissioner, by rule, to exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction, rather than by this chapter. Makes a conforming change.

SECTION 5. Amends Section 401.108(c), Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to reevaluate every five years the qualifications and security provided by certain license holders.

SECTION 6. Amends Section 401.109(b), Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to require a holder of a certain license for the disposal of radioactive waste to provide a certain security. Makes a conforming change.

SECTION 7. Amends Section 401.111, Health and Safety Code, to provide that TCEQ, rather than TCEQ and the executive commissioner, adopts rules for the issuance of licenses. Makes conforming changes.

SECTION 8. Amends Section 401.112, Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to consider certain factors when making a licensing decision on licenses for the disposal of certain radioactive waste. Requires TCEQ, rather than the executive commissioner and TCEQ, to determine by rule criteria to be used in licensing considerations. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Sections 401.113(a) and (b), Health and Safety Code, to require TCEQ, rather than the agency holding to hearing, to prepare or have prepared a written analysis of the effect on the environment of a proposed licensing activity. Makes a conforming change.

SECTION 10. Amends Section 401.114, Health and Safety Code, to provide that TCEQ, rather than the department or TCEQ, grants or renews licenses to dispose of low-level radioactive waste. Makes conforming changes.

SECTION 11. Amends Section 401.116, Health and Safety Code, to require TCEQ to adopt rules to establish requirements for public notice of and public participation in the amendment of

a license issued under this subchapter, including both minor and major amendments. Deletes existing text relating to former notice and hearing requirements for license amendment.

SECTION 12. Amends Section 401.117, Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to prohibit certain activities relating to low-level radioactive waste until certain notice and hearing requirements are met. Makes a conforming change.

SECTION 13. Amends Section 401.202(a), Health and Safety Code, to require TCEQ, rather than the department or TCEQ, to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste. Makes a conforming change.

SECTION 14. Amends Section 401.262, to provide that TCEQ, rather than the department, has the sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with certain standards and criteria.

SECTION 15. Amends Section 401.2625, Health and Safety Code, to provide that TCEQ, rather than the commissioner of state health services (commissioner), has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for certain functions relating to by-product material, including storage or processing.

SECTION 16. Amends Section 401.263(a), (c), (d), (e), and (f), as follows:

(a) Provides that TCEQ, rather than the department, considers the issuance, renewal, or amendment of a license relating to by-product material. Makes a conforming change.

(c) Requires TCEQ to give notice of the analysis as provided by TCEQ rule, rather than executive commissioner rule.

(d) Makes a conforming change.

(e) Makes a conforming change.

(f) Requires TCEQ, rather than the executive commissioner, to prohibit, by rule, major construction with respect to an activity that is to be licensed until certain requirements are met.

SECTION 17. Amends Sections 401.264(a), (c), and (d), to authorize TCEQ, rather than the department, to provide an opportunity for a public hearing regarding the issuance, renewal, or amendment of a license relating to by-product materials. Makes conforming changes.

SECTION 18. Amends Section 401.265, Health and Safety Code, to require TCEQ, rather than the department, to prescribe certain conditions for the issuance, renewal, or amendment of a license for an activity that results in production of by-product material. Provides that one of such conditions may be requiring the license holder to comply with standards prescribed by TCEQ, rather than by the executive commissioner.

SECTION 19. Amends Section 401.266(a), Health and Safety Code, to authorize TCEQ, rather than the executive commissioner, by rule, to require certain land to be transferred to the federal government or to the state before termination of certain licenses. Deletes existing text relating to the department requiring this by order.

SECTION 20. Amends Section 401.267, Health and Safety Code, to authorize TCEQ, rather than the department, to acquire by-product material and certain property containing the by-product material. Makes conforming changes.

SECTION 21. Amends Section 401.269, Health and Safety Code, to authorize TCEQ, rather than the department, to undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody. Makes a conforming change.

SECTION 22. Amends Sections 401.270(a), (b), (e), and (f), Health and Safety Code, to authorize TCEQ, rather than the department, to require action to correct or remove a threat to the environment or to public safety caused by by-product material or its production. Makes conforming changes.

SECTION 23. Amends the heading to Subchapter K, Chapter 401, Health and Safety Code, to make a conforming change.

SECTION 24. Amends Sections 401.412(a) and (b), Health and Safety Code, as follows:

(a) Deletes the definition of "radioactive substance."

(b) Provides that TCEQ, rather than the commissioner, has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or the disposal of by-product material.

SECTION 25. Amends Section 401.413, Health and Safety Code, to delete existing text providing that this section does not apply to a person required to obtain a license for the recovery or processing of source material or for recovery, processing, or disposal of by-product material.

SECTION 26. Amends Section 401.414, Health and Safety Code, to require TCEQ, the Health and Human Services Commission (HHSC), the Railroad Commission of Texas, and the department by rule to adopt a memorandum of understanding defining their respective duties under this chapter. Deletes existing text relating to the board of health. Makes a conforming change.

SECTION 27. Amends Sections 401.415(d) and (e), Health and Safety Code, to make conforming changes.

SECTION 28. Amends Chapter 401, Health and Safety Code, by adding Subchapter M, as follows:

SUBCHAPTER M. FEES AND SURCHARGES

Sec. 401.451. STATE FEE ON RADIOACTIVE SUBSTANCES DELIVERED FOR STORAGE, PROCESSING, OR DISPOSAL. (a) Requires a holder of a license issued by TCEQ under this chapter that authorizes the storage, processing, or disposal of a radioactive substance to transfer to the state general revenue fund each quarter an amount equal to 10 percent of the license holder's gross receipts received from operations under the license.

(b) Provides that Subsection (a) does not apply to the gross receipts of certain compact waste disposal facility license holders.

Sec. 401.452. SURCHARGE ON RADIOACTIVE SUBSTANCES DELIVERED FOR STORAGE, PROCESSING, OR DISPOSAL. (a) Requires the holder of a license issued by TCEQ under this chapter that authorizes the storage, processing, or disposal of a radioactive substance, on the delivery of the radioactive substance to the license holder, to collect a surcharge as provided by this section from the person who delivers the radioactive substance to the license holder. Requires the license holder to transfer to the state general revenue fund a certain amount.

(b) Requires TCEQ, by rule, to establish and periodically revise a schedule of surcharges imposed by Subsection (a) with multipliers to impose surcharges in varying amounts based on certain factors. Provides that the surcharge does not apply to the delivery of certain compact waste.

(c) Requires TCEQ, in considering the hazard presented by radioactive substances and any other items with which the radioactive substances may be mixed or shipped, to consider certain factors.

(d) Authorizes rules adopted under this section to include provisions establishing the classification of customers and services, and the applicability of fees.

(e) Requires TCEQ to consult with the radiation advisory board and the Legislative Budget Board and consider the recommendations of those boards before adopting or amending the surcharge rate schedule.

(f) Prohibits a rule or order adopted by TCEQ under this section to conflict with a ruling of a federal regulatory body.

Sec. 401.453. AUDIT AUTHORITY. Authorizes TCEQ to audit a license holder's financial records to ensure that the fees and surcharges imposed under this subchapter are accurately paid. Requires the license holder to comply with TCEQ's audit-related requests for information.

SECTION 29. Amends Section 361.015, Health and Safety Code, as follows:

(a) Provides that TCEQ is the state agency that licenses the storage and processing activities of radioactive waste, as well as the disposal activities, not preemptively regulated by the federal government.

(b) Provides that, except as provided by Subsection (a), HHSC, acting through the department, rather than the Texas Department of Health, is the state agency that regulates radioactive waste activities not preemptively regulated by the federal government. Deletes the exclusion for disposal activities.

SECTION 30. (a) Transfers certain rights, powers, duties, obligations, functions, activities, property, programs, and appropriations to TCEQ on the earlier of the 31st day after the effective date of this Act or September 1, 2005.

(b) Provides that certain appropriations transferred are transferred for the remainder of the state fiscal biennium.

(c) Prohibits TCEQ from charging a fee for an application that is pending before HHSC or the Department of State Health Services (DSHS) on the date the transfer directed by Subsection (a) occurs.

(d) Provides that as of the date of the transfer, TCEQ has full responsibility for the administration and enforcement of the laws related to the licensing or regulation of radioactive substances recovery, storage, processing and disposal under its jurisdiction, and the licensing or regulation of long-term care of decommissioned sites for the disposal of by-product material. Requires TCEQ to carry out all related duties, responsibilities, functions, and activities as provided by law.

(e) Provides that the transfer of rights, powers, duties, obligations, functions, activities, property, and programs of HHSC or DSHS to TCEQ made by this Act does not affect or impair any act done or obligation, right, license, permit, requirement, or penalty accrued or existing under the former law. Provides that the former law remains in effect for the purposes of any action concerning such an act done or obligation, right, license, permit, requirement, or penalty. Requires TCEQ to continue a proceeding of HHSC or DSHS that is related to a responsibility, duty, activity, function, or program transferred by this Act. Provides that a rule of HHSC or DSHS is related to a responsibility, duty, activity, function, or program transferred by this Act is enforceable as a rule of TCEQ until TCEQ adopts other rules.

(f) Requires control of and title to certain property and material acquired before the effective date of this Act to be transferred to TCEQ on the state's behalf as soon as practicable. Sets forth the property and material to which this section does not apply.

(g) Requires TCEQ to provide an opportunity for employees of HHSC or DSHS who have performed duties related to a right, power, duty, obligation, responsibility, function,

activity, or program transferred by this Act to request a transfer to TCEQ employment. Requires TCEQ in making employment decisions to ensure that federal requirements for engineering expertise are met and consider the value of maintaining continuity in personnel.

(h) Requires TCEQ, HHSC, and DSHS by interagency agreement or contract to cooperate in preventing any delay in the transfer of property or personnel, or a right, power, duty, obligation, responsibility, function, activity, or program made by this Act.

(i) Provides that the transfers made by this Act do not affect any matter that is the subject of litigation pending on the effective date of this Act.

(j) Requires TCEQ to continue any applications review or processing and any hearings that concern a matter subject to transfer that, on the date of the transfer, is being conducted by HHSC, DSHS, or their successor agencies. Requires the agencies to cooperate and consult with each other to minimize delay.

SECTION 31. (a) Sets forth the procedure that TCEQ must follow for an amendment of an existing license that authorizes storage or processing of radioactive substances from other persons, the application for which is pending on the effective date of this Act.

(b) Requires TCEQ to give notice to any person who has notified TCEQ in advance that the person desires to receive notice of the proposed amendment.

(c) Requires published notice regarding the amendment to include certain information.

(d) Requires TCEQ to give certain notice of a hearing, if one is held.

(e) Defines "person affected."

SECTION 32. Effective date: upon passage or September 1, 2005.