

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1667
By: Duncan
Natural Resources
4/22/2005
Committee Report (Substituted)

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.

C.S.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.

C.S.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.

C.S.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 25 (Section 401.301, Health and Safety Code), SECTION 28 (Section 401.343, Health and Safety Code), and SECTION 40 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) and SECTION 7 (Section 401.111, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 32 (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executive commissioner of the Health and Human Services Commission [Board of Health and Texas Department of Health] is rescinded in SECTION 7 (Section 401.111, Health and Safety Code) and SECTION 8 (Section 401.112, Health and Safety Code) of this bill.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 [Texas Department of Health] is transferred to the Texas Commission on Environmental Quality in SECTION 18 (Section 401.263, Health and Safety Code) and SECTION 21 (Section 401.266, 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 32 (Section 401.414, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 33 (Section 401.415, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 401.003, Health and Safety Code, by amending Subdivisions (2), (4), (5), and (6) and adding Subdivision (12-1) to redefine "board," "commission," "commissioner," and "department," and define "gross receipts."

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 require TCEQ to provide for licensing for disposal of radioactive substances, rather than radioactive material except for the disposal of by-product 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 license for the disposal of radioactive substances, rather than certain low-level 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 for new sites for processing or disposal of radioactive substances, rather than low-level radioactive waste. Requires TCEQ to consult with the advisory board and with the Texas Water Development Board in developing proposed rules. Makes conforming changes.

SECTION 8. Amends Section 401.112, Health and Safety Code, to require TCEQ, rather than the department or TCEQ within its jurisdiction, 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 each within its jurisdiction, 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 within its jurisdiction, 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 Subchapter D, Chapter 401, Health and Safety Code, by adding Section 401.120, as follows:

Sec. 401.120. LIMITATION ON RADIOACTIVE SUBSTANCE STORAGE. (a) Requires TCEQ to impose as a condition of each license that authorizes the storage of a radioactive substance from another person a maximum length of time that the radioactive substance may be stored under the license.

(b) Requires TCEQ to impose an administrative penalty or bring an action for civil penalty for a violation of a license condition imposed under Subsection (a).

(c) Sets forth the maximum amount of an administrative penalty. Provides that each day of a continued violation constitutes a separate violation subject to the penalty.

(d) Sets forth the maximum amount of a civil penalty. Provides that each day of a continued violation constitutes a separate violation subject to the penalty.

SECTION 14. Amends Section 401.202(a), Health and Safety Code, to require TCEQ, rather than the department or TCEQ within its respective jurisdiction, to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste. Makes a conforming change.

SECTION 15. Amends Sections 401.241(a) and (b), Health and Safety Code, as follows:

(a) Requires TCEQ to consider certain issues in determining the amount of security required of a holder of a license to dispose of radioactive substances, rather than a compact waste disposal facility license holder. Makes conforming changes.

(b) Sets forth the amount of security required of a compact waste disposal facility license holder, rather than a license holder, under this section.

SECTION 16. 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 17. 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 18. Amends Sections 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 19. 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 to dispose of by-product materials. Makes conforming changes.

SECTION 20. 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 radioactive substances license, rather than a radioactive material 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 21. 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 22. 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 23. 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 24. 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 25. Amends Section 401.301, Health and Safety Code, as follows:

Sec. 401.301. New heading: LICENSE AND REGISTRATION FEES. Authorizes TCEQ and the department, rather than the department, to collect a fee for each license and registration that the agency issues. Authorizes TCEQ and the executive commissioner, rather than the executive commissioner, to set the fee by rule in a certain amount. Authorizes TCEQ to assess and collect additional fees from the applicant to recover certain costs. Makes conforming changes.

SECTION 26. Amends Section 401.302(a), Health and Safety Code, to authorize the department, in coordination with TCEQ, to set and collect an annual fee from the operators of certain nuclear facilities.

SECTION 27. Amends Sections 401.305(c), (e), (f), and (g), Health and Safety Code, to authorize money in the perpetual care account to be administered only for certain functions related to radioactive substances, rather than radioactive material. Authorizes the department or TCEQ, rather than the department, to use the money in the perpetual care account to pay for certain other measures. Makes conforming changes.

SECTION 28. Amends Section 401.343, Health and Safety Code, to authorize the department or TCEQ, rather than the department, to seek reimbursement to pay for certain functions relating to radioactive substances, rather than radioactive material. Makes conforming and nonsubstantive changes.

SECTION 29. Amends the heading to Subchapter K, Chapter 401, Health and Safety Code, to make a conforming change.

SECTION 30. 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 31. 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 32. Amends Section 401.414, Health and Safety Code, as follows:

Sec. 401.414. New heading: MEMORANDA OF UNDERSTANDING. Requires TCEQ, the Health and Human Services Commission (HHSC), the Railroad Commission of Texas (railroad commission), and the board of health by rule to adopt memoranda of understanding defining their respective duties under this chapter. Makes a conforming change.

SECTION 33. Amends Sections 401.415(a), (d), and (e), Health and Safety Code, as follows:

(a) Provides that the railroad commission has sole authority to regulate and issue licenses, permits, and orders for the processing, storage, and disposal, rather than just disposal, of oil and gas naturally occurring radioactive material (NORM) waste and the decontamination and maintenance of equipment.

(d) Makes a conforming change.

(e) Specifies that the rules the railroad commission is required to issue regarding the management of oil and gas NORM waste includes rules governing processing, storage, and disposal of the waste and the decontamination and maintenance of equipment. Requires the rules to provide protection for public health, safety, and the environment equivalent to the protection provided by rules of TCEQ applicable to processing, storage, and disposal, rather than just disposal, of other NORM wastes. Deletes the reference to different methods and sites for disposing of oil and gas NORM wastes. Makes conforming changes.

SECTION 34. 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 DISPOSAL. (a) Requires a holder of a license issued by TCEQ under this chapter that authorizes the disposal of a radioactive substance from other persons 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 certain compact waste or federal facility waste.

Sec. 401.452. SURCHARGE ON RADIOACTIVE SUBSTANCES DELIVERED FOR DISPOSAL. (a) Requires the holder of a license issued by TCEQ under this chapter that authorizes the disposal of a radioactive substance from other persons to pay a surcharge on radioactive substances received under the license in a certain amount. Requires the license holder to remit the surcharges under this section to TCEQ in accordance with TCEQ rules. Requires TCEQ to deposit the surcharges to the credit of the general revenue fund. Provides that the surcharge does not apply to delivery of compact waste from a party state.

(b) Requires TCEQ, by rule, to require the surcharge under Subsection (a) to be imposed by shipment or standard shipment, by container or standard container, by weight, by volume, or on another basis.

(c) Requires TCEQ, by rule, to establish a threshold level measured in millicuries below which a surcharge under this section is not required to be paid. Requires the threshold level to be established for each type of radionuclide the license holder may receive and to be based on the hazards presented by the radionuclides, considered individually or as a group with common characteristics and hazards. Requires TCEQ to consider, in establishing the threshold under this subsection, the economic effect the surcharge may have on the ability of the license holder to conduct licensed activities competitively. Requires TCEQ to consider certain factors in considering the hazard presented by the radionuclide.

(d) Requires TCEQ, by rule, to establish a procedure by which the surcharge for radioactive substances received by the license holder may be readily computed.

Sec. 401.453. AUDIT AUTHORITY. Authorizes TCEQ to audit a license holder's financial records and waste manifest information 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 35. 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.

(c) Provides that the railroad commission is the state agency that licenses and regulates the possession, storage, processing, handling, and disposal of oil and gas NORM waste and decontamination and maintenance of related equipment.

SECTION 36. Amends Subchapter B, Chapter 27, Water Code, by adding Section 27.022, as follows:

Sec. 27.022. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF RADIOACTIVE SUBSTANCES. (a) Authorizes TCEQ, as a component of an injection well permit, to issue an authorization for an in situ mining of radioactive substances in a specified production area. Prohibits the authorization from containing a provision that requires any additional approval of TCEQ or any additional hearing for the permit holder to conduct in situ mining in the production area, including a provision that requires an approval or hearing before the permit holder may drill or operate an additional well in the production area.

(b) Provides that on or after September 1, 2005, a rule or order of TCEQ that requires additional approval of TCEQ of an additional hearing for the permit

holder to conduct in situ mining in the production area specified in an injection well permit is void.

(c) Provides that this section does not affect the authority of TCEQ to exercise certain powers.

(d) Provides that the change in law made by this section does not affect any matter that is the subject of litigation on or before September 1, 2005.

SECTION 37. (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) Authorizes TCEQ to charge 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 state and federal requirements 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.

(k) Provides that an application for the renewal or amendment of a license to recover or process source material and to dispose of the associated by-product material that is pending with DSHS on the earlier of the 31st day after the effective date of this Act or September 30, 2005, is considered, based on federal requirements, to be approved by DSHS on the earlier of the 90th day after the effective date of this Act or October 31, 2005, unless DSHS or TCEQ before that date determines that the application should not be approved because of a health and safety emergency or because the applicant substantially fails to meet application requirements.

(l) Requires DSHS, on or before the earlier of the 31st day after the effective date of this Act or September 30, 2005, to approve any pending remediation plan that is subject to the transfer required under this section, according to federal requirements, inspect the related remediation sites to ensure that remedial actions have been completed according to the approved plan, and report to the federal Nuclear Regulatory Commission DSHS's approval of the plan and the results of the inspection under Subdivisions (1) and (2) of this subsection.

(m) Provides that a remediation plan that is subject to the transfer required under this section the approval of which is pending with DSHS on the earlier of the 31st day after the effective date of this Act or September 30, 2005, is considered, based on federal requirements, to be approved by DSHS on the earlier of the 90th day after the effective date of this Act or October 31, 2005, unless DSHS or TCEQ before that date determines that the plan should not be approved because of a health and safety emergency or because the plan substantially fails to meet the requirements for approval.

SECTION 38. (a) Defines "license."

(b) Provides that on the effective date of this Act, a condition of a license that would subject the license holder to a civil or administrative penalty for the license holder's failure to transfer by-product material to certain disposal sites by a certain date is void.

(c) Provides that this section does not impair the authority of TCEQ to impose a license condition under Section 401.120, Health and Safety Code, as added by this Act.

SECTION 39. (a) Provides that this Act does not impair, delay, or affect the priority established by law for processing and review of the application for a license to dispose of low-level radioactive waste that was filed with TCEQ before January 1, 2005.

(b) Requires TCEQ to give priority to the processing and review of a license application described by Subsection (a) over all other applications that pertain to radioactive substances or radioactive waste pending before TCEQ except for those applications the executive director of TCEQ determines are necessarily of a higher priority to avert or address an emergency concerning the public health or safety.

(c) Requires TCEQ, subject to the priority given under Subsection (b), to give priority to the review and processing of certain applications.

SECTION 40. (a) Requires TCEQ, not later than the 60th day after the effective date of this Act, to initiate a study to determine the appropriate standards to be applied to the closure and reclamation of in situ uranium mining sites. Requires the study to be completed before March 1, 2006.

(b) Requires TCEQ to initiate any necessary proceedings to adopt the appropriate standards as determined under Subsection (a) by rule.

SECTION 41. (a) Requires TCEQ to issue its final decision to approve or disapprove the license application pending with TCEQ under Section 401.202(b) (for a compact waste disposal facility), Health and Safety Code, and its final decision to approve or disapprove the license application pending with TCEQ under Section 401.2625 (for source material recovery and processing or disposal of by-product material), Health and Safety Code, for the same location not later than January 30, 2007. Provides that Section 401.237(b) (regarding technical review

completed by TCEQ), Health and Safety Code, and Sections 401.239(c) and (d) (regarding contested cases), Health and Safety Code, do not apply to an application for a license described by this Subsection. Requires the administrative law judge presiding over the proceeding under Section 401.239, Health and Safety Code, to expedite the procedures as necessary for TCEQ to make its decisions as provided by this subsection.

(b) Requires the applicant for a license under Subsection (a), notwithstanding other law or any rule on the subject of timeliness of an applicant providing information pertaining to an application for a license, to assist TCEQ in meeting the deadline imposed by Subsection (a) by submitting to TCEQ any information TCEQ requires regarding the application in a prompt and timely manner.

SECTION 42. Effective date: upon passage or September 1, 2005.