

BILL ANALYSIS

Senate Research Center

S.B. 39
By: Duncan
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.

S.B. 39 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.39 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. These funds would be deposited into General Revenue (eight percent) and the host county (two percent).

S.B. 39 transfers all disposal, storage, and processing of oil and gas NORM waste, including the maintenance and decontamination of oil field equipment, to the Railroad Commission of Texas (RCT).

S.B. 39 allows TCEQ to set by license condition the amount of time that radioactive substances may be stored in order to prevent "eternal storage" and ensures that licensees who dispose of radioactive waste have proper financial assurance.

Finally, S.B. 39 would allow uranium mining permit holders to conduct minor in situ mining in a production area without having to obtain additional approval and go through an additional contested case hearing. This change gives the TCEQ the ability to determine the difference between major and minor in situ mining. In addition, this change states that an authorization to mine or resume mining in a production area that does not amend a restoration table is not a major amendment.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 5 (Section 401.106, Health and Safety Code), SECTION 12 (Section 401.116, Health and Safety Code), SECTION 26 (Section 401.301, Health and Safety Code), SECTION 29 (Section 401.343, Health and Safety Code), SECTION 36 (Section 27.023, Water Code), and SECTION 37 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 4 (Section 401.104, Health and Safety Code) and SECTION 8 (Section 401.111, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 33 (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 8 (Section 401.111, Health and Safety Code) and SECTION 9 (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 4 (Section 401.104, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 33 (Section 401.414, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 34 (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), (6) and (15) and adding Subdivision (12-a) to redefine "board," "commission," "commissioner," "department," and "person affected," and to 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, the processing of certain by-product material and sites for the disposal of certain radioactive waste and by-product material. Deletes the exception to the authority to regulate and license sites for the disposal of certain by-product material.

SECTION 3. Amends Section 401.054, Health and Safety Code, as follows:

(a) Requires the Department of State Health Services (DSHS) or TCEQ to provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, unless otherwise required by this chapter, on written request of a person affected by any of certain procedures. Makes conforming changes.

(b) Authorizes TCEQ to hold a contested case hearing on a license application under this chapter on TCEQ's determination that a timely written request for a contested case hearing was filed by a person affected. Provides that the determination of who is a person affected under this chapter is governed exclusively by this chapter. Deletes existing text relating to the inapplicability of certain license or registration activities.

(c) Authorizes TCEQ to hold a contested case hearing on a license renewal or amendment application under this chapter only if a change is being requested that would constitute a major amendment and a person affected requests the hearing.

SECTION 4. Amends Section 401.104, Health and Safety Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Requires TCEQ by rule to provide for licensing for disposal of radioactive substances, rather than radioactive material except for the disposal of certain by-product material. Deletes existing text requiring DSHS or other department designated by the executive commissioner of the Health and Human Services Commission, by rule, to provide for licensing of certain by-product material.

(f) Authorizes a separate commercial storage and processing license to be issued for a site also licensed for disposal under this chapter.

SECTION 5. Amends Section 401.106(a), Health and Safety Code, to authorize the executive commissioner of the Health and Human Services Commission (executive commissioner) (HHSC) 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 6. 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 7. 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 to assure performance of the license holder's obligations under this chapter. Makes a conforming change.

SECTION 8. Amends Section 401.111, Health and Safety Code, to require that TCEQ, rather than TCEQ and the executive commissioner, in adopting rules for the issuance of licenses for new sites for processing or disposal of radioactive substances, rather than low-level radioactive waste adopt criteria for the designation of unsuitable sites, including certain specified sites. Requires TCEQ to consult with the advisory board and with the Texas Water Development Board (TWDB) amongst others in developing proposed rules. Makes conforming changes.

SECTION 9. 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 10. Amends Sections 401.113(a) and (b), Health and Safety Code, to require TCEQ, rather than the agency holding the 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 11. Amends Section 401.114, Health and Safety Code, to require TCEQ, rather than the department or TCEQ within its jurisdiction, before it grants or renews licenses to dispose of certain low-level radioactive waste to give notice and provide an opportunity for a public hearing in the manner provided by TCEQ's formal hearing procedure and Chapter 2001, Government Code. Makes conforming changes.

SECTION 12. 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, consistent with Section 401.054(c). Deletes existing text relating to former notice and hearing requirements for a license amendment.

SECTION 13. 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 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, Health and Safety Code, 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), Health and Safety Code, 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), Health and Safety Code, 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 the transfer 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 byproduct 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 Subchapter G, Chapter 401, Health and Safety Code, by adding Sections 401.271 and 401.272, as follows:

Sec. 401.271 STATE FEE ON RADIOACTIVE SUBSTANCES. (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 remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of this Act enacting this section in certain specified amounts to the comptroller of public accounts to be remitted to the general revenue fund and to the host county.

(b) Provides that Subsection (a) does not apply to certain compact waste or federal facility waste, or certain industrial solid waste.

Sec. 401.272. AUDIT AUTHORITY. Authorizes TCEQ to audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. Requires the license holder to comply with TCEQ's audit-related requests for information.

SECTION 26. 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 27. 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 28. 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 29. 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 30. Amends the heading to Subchapter K, Chapter 401, Health and Safety Code, to make a conforming change.

SECTION 31. 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 32. 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 certain by-product material.

SECTION 33. Amends Section 401.414, Health and Safety Code, as follows:

Sec. 401.414. New heading: MEMORANDA OF UNDERSTANDING. Requires TCEQ, HHSC, and the Railroad Commission of Texas (RCT) by rule to adopt memoranda of understanding defining their respective duties under this chapter. Makes conforming changes. Deletes text referring to the Texas Board of Health.

SECTION 34. Amends Sections 401.415(a), (d), and (e), Health and Safety Code, and adds Subsection (f), as follows:

(a) Provides that, notwithstanding any other provision of this chapter, RCT has sole authority to regulate and issue licenses, permits, and orders, and establish fees to pay 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 RCT 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 oil-field equipment and fees established pursuant to Subsection (a). Requires RCT, in developing the rules, to consult with TCEQ and the department regarding protection of the public health and the environment. Requires that the rules 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 certain other NORM wastes. Deletes the reference to different methods and sites for disposing of oil and gas NORM wastes. Makes conforming changes.

(f) Authorizes RCT, in adopting a fee structure, to consider any factors necessary to provide for the equitable allocation among NORM operators of the costs of administering RCT's oil and gas NORM program under this section. Prohibits the total amount of fees estimated to be collected under rules adopted by RCT under this section from exceeding the estimated costs of administering RCT's oil and gas NORM program under this section.

SECTION 35. Amends Section 361.015, Health and Safety Code, as follows:

Sec.361.015. JURISDICTION: RADIOACTIVE WASTE. (a) Provides that TCEQ is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and 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 under Chapter 401 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 27.023, as follows:

Sec. 27.023. 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. Requires TCEQ by rule to define the difference between major and minor in situ mining.

(b) Provides that on or after the effective date of the Act enacting this section, a rule or provision of a permit or order of TCEQ that requires additional approval of TCEQ or an additional hearing for the permit holder to conduct minor in situ mining in the production area specified in an injection well permit is not effective. Provides that notwithstanding any provision of this code or of a commission rule or order, and application for minor in situ authorization is not subject to a contested case hearing, regardless of when the application was submitted.

(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 November 1, 2005. Requires an administrative law judge presiding over a licensure proceeding to expedite the procedures necessary to complete the hearing in a timely manner.

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 November 1, 2005.

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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 was received prior to January 1, 2005, and is pending with DSHS on August 31, 2005, is considered, based on federal requirements, approved by TCEQ on September 1, 2006, unless 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.

(k) Requires DSHS, on or before the earlier of the 31st day after the effective date of this Act or November 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.

(l) 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 November 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 December 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.

(m) Requires DSHS, notwithstanding the changes to Chapter 401, Health and Safety Code, made by this Act, to retain jurisdiction over, and render a final decision on, an application for an amended license to store or process radioactive substances that was filed with DSHS on or before January 1, 2005, and that has been referred to the State Office of Administrative Hearings (SOAH) by DSHS before the effective date of this Act. Provides that a license application subject to this subsection is governed only by the laws of the state and rules and regulations of DSHS effective at the time the application was filed. Once a final decision is rendered by DSHS, jurisdiction over any license issued is required to be transferred to TCEQ.

(n) Requires an application for a new license to dispose of by-product material that is filed with DSHS on or before January 1, 2005, and that has not been referred to SOAH before the effective date of this Act to be processed by TCEQ in a certain manner following the effective date of this Act.

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.

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. Requires an applicant for a license, notwithstanding other law or any rule on the subject of timeliness of an applicant providing information pertaining to an application for a license from TCEQ, to assist TCEQ in meeting any deadlines imposed by Chapter 401, Health and Safety Code, by submitting to TCEQ any information it requires regarding the application in a prompt and timely manner.

SECTION 41. (a) Provides that on the earlier of the 31st day after the effective date of this Act or November 1, 2005, all money appropriated to DSHS for the regulation of the commercial storage and processing and the disposal of radioactive waste, except money related to the regulation of oil and gas naturally occurring radioactive material waste is transferred to TCEQ, including certain amounts, and that eight full-time equivalent employees of DSHS working in the regulation of the commercial storage and processing and the disposal of radioactive waste, except those employees whose work is directly related to the regulation of oil and gas naturally occurring radioactive material waste, are transferred to TCEQ.

(b) Provides the certain fee revenues are appropriated to TCEQ in certain amounts for the state fiscal year beginning September 1, 2005 and are prohibited from exceeding certain amounts for the state fiscal year beginning September 1, 2006.

(c) Requires TCEQ to use the appropriated money to regulate radioactive waste as provided by Chapter 401, Health and Safety Code.

(d) Provides that the number of full-time equivalent employees authorized for TCEQ is increased by eight for each fiscal year of the biennium beginning September 1, 2005.

(e) Authorizes the governor with advice of the Legislative Budget Board to resolve any disputes concerning the transfer of appropriations and employees from DSHS to TCEQ under this Act.

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