

SUBJECT: Revising radioactive waste disposal regulation; reducing surcharge, fee

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Landgraf, Dominguez, Dean, Kacal, Kuempel, Reynolds

2 nays — Goodwin, Morales Shaw

1 absent — Morrison

WITNESSES: For — Edward Selig, Advocates for Responsible Disposal in Texas; Morse Haynes, Andrews Economic Development Corporation; (*Registered, but did not testify*: Roland Leal, CPS Energy; Russell Mullins, Exelon; Eric Blackwell, NRG; Brent Chaney, Vistra Corporation)

Against — Robert Singleton, Citizens Organized to Defend Austin; Tommy Taylor, Fasken Oil and Ranch Ltd; Susybelle Gosslee, League of Women Voters Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Adrian Shelley, Public Citizen; Karen Hadden, SEED Coalition; Lon Burnam, Tarrant Coalition for Environmental Awareness; and eight individuals; (*Registered, but did not testify*: Jimmy Carlile, Fasken Oil and Ranch Ltd; Ben Shepperd, Permian Basin Petroleum Association; Robin Schneider, Texas Campaign for the Environment; Vanessa MacDougal; Robert Norris)

On — (*Registered, but did not testify*: Ashley Forbes, TCEQ; David Carlson, Waste Control Specialists)

BACKGROUND: Health and Safety Code ch. 403 governs an interstate compact for the management and disposal of low-level radioactive waste. The compact provides the framework for a cooperative effort between party states to limit the number of facilities needed to manage low-level radioactive waste and to encourage the reduction of its generation, among other goals.

"Party state" means any state that has become party to the compact, which

currently includes Texas, Maine, and Vermont.

Ch. 401, the Texas Radiation Control Act, establishes a framework for state agencies that regulate the use, possession, and disposal of radioactive materials. Sec. 401.202 allows the Texas Commission on Environmental Quality (TCEQ) to grant licenses to facilities for the disposal of compact waste.

"Compact waste" means low-level radioactive waste that is originally generated onsite in Texas or in a party state or is not generated in Texas or a party state but has been approved for importation to the state by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Under sec. 401.207, a license holder may not accept low-level radioactive waste generated in another state for disposal except under certain circumstances. A license holder is allowed to accept certain nonparty compact waste, and TCEQ must assess a surcharge for its disposal. The surcharge is 20 percent of the total contracted rate negotiated between the compact waste disposal facility license holder and the nonparty compact waste generator and is assessed in addition to the total contracted rate.

Sec. 401.208 requires TCEQ to study at least once every four years the available volume and curie capacity of the compact facility for the disposal of party state and nonparty compact waste. "Curie capacity" means the amount of radioactivity of the waste that may be accepted by the compact facility as determined by TCEQ.

Concerns have been raised that the compact waste disposal facility in Andrews County could be used for the interim storage of high-level radioactive waste. Others have noted that the facility has become less economically viable since its creation due to changing market dynamics.

DIGEST:

CSHB 2692 would prohibit the disposal or storage of high-level nuclear waste in Texas except under certain circumstances. The bill also would revise the framework for the disposal of compact waste and for compact waste disposal facility license holders, including by reducing the

surcharge for the disposal of nonparty compact waste, limiting nonparty compact waste, and eliminating part of a related state fee.

Disposing, storing high-level nuclear waste in Texas. The bill would prohibit a person, including the compact waste disposal facility license holder, from disposing of or storing high-level radioactive waste or spent nuclear fuel in Texas. The bill would except storage at the site of currently or formerly operating nuclear power reactors or nuclear research and test reactors located on university campuses.

The bill would define "high-level radioactive waste" to mean:

- the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contained fission products in sufficient concentrations; and
- other highly radioactive material that the U.S. Nuclear Regulatory Commission, consistent with existing law, determined by rule required permanent isolation.

Reserved capacity for party state waste. The bill would reserve for the exclusive use of party state compact waste disposal in the compact waste disposal facility the greater of three million total cubic feet or the required volume identified by the Texas Commission of Environmental Quality (TCEQ) in studying the compact facility and the greater of two million total curies or the required curie capacity identified by TCEQ in studying the facility.

Of the reserved volume and curie capacity, 80 percent would have to be reserved for compact waste generated in Texas, and 20 percent would have to be reserved for compact waste generated in nonhost party states.

TCEQ would have to correct for radioactive decay in determining licensed disposal curie capacity in a compact facility.

Surcharge for disposal of nonparty compact waste. The bill would

reduce the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the compact facility from 20 percent to 5 percent of the total contracted rate negotiated between the compact waste disposal facility license holder and the nonparty compact waste generator.

Limitation on nonparty compact waste. The compact waste disposal facility license holder could accept nonparty compact waste at the facility only if:

- the waste was authorized by the Texas Low-Level Radioactive Waste Disposal Compact Commission; and
- the facility had not less than three years' worth of constructed capacity based on the average amount of party state compact waste disposed in the facility in the preceding five years.

If the facility did not have sufficient constructed capacity, to be permitted to accept nonparty compact waste the compact waste disposal facility license holder would have to add constructed capacity to meet the requirements or file and have approved by TCEQ an acceptable bond conditioned on the construction of additional, sufficient capacity.

If a utility operating a nuclear electric generation facility in a party state had notified the U.S. Nuclear Regulatory Commission that the facility would be decommissioned, and the time-phased decommissioning schedule and the post-shutdown decommissioning activities report indicated that low-level radioactive waste was to be disposed of at the compact facility, the compact waste disposal facility license holder would have to have constructed adequate disposal capacity at the time of the disposal of waste from the decommissioning.

The compact waste disposal facility license holder would have to obtain an amendment to the facility operating license to increase the allowable curie capacity by two million curies when the facility had reached 80 percent of the total curies for which it was licensed.

Contracts for nonparty compact waste disposal. The bill would require

rates and contract terms negotiated between the compact waste disposal facility license holder and nonparty compact waste generators to be reviewed periodically by TCEQ to ensure that the rates and terms did not have long-term, adverse effects on the cumulative surcharges paid to Texas or the county in which the disposal facility was located.

State fee. Under the bill, the compact waste disposal facility license holder no longer would have to transfer quarterly to general revenue 5 percent of the gross receipts from compact waste received at the facility.

Waste disposal fee comparison. The compact waste disposal facility license holder would have to conduct an annual comparison of party state and nonparty state compact waste disposal fees that compared the average party state disposal fee with the average nonparty state disposal fee.

If the average party state disposal fee exceeded the average nonparty state disposal fee, the compact waste disposal facility license holder would have to issue a rebate for the preceding year's fees to the party state generators in an amount sufficient to reduce the average party state disposal fee after the rebate to \$1 less than the average nonparty state disposal fee.

The compact waste disposal facility license holder would have to allocate the rebate according to the fractional amount of the total compact waste disposal fees paid by each generator based on the preceding year's records.

No more than once per year, on written request of a utility operating a nuclear electric generation facility in a party state, the compact waste disposal facility license holder would have to:

- retain an independent auditor to evaluate the computation of the average compact waste disposal fee and rebate; and
- within 30 days of receiving the final report, make a copy available to the requesting utility, the governor, the lieutenant governor, the House speaker, and legislative committees with appropriate jurisdiction.

Other provisions. The bill would repeal provisions related to volume reduction requirements of nonparty compact waste, containerization of Class A low-level radioactive waste, and waste disposal fees in contracts and for disposal of nonparty compact waste.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would result in a negative impact of \$798,000 to general revenue related funds and a loss of about \$2.3 million to the Environmental Radiation and Perpetual Care account through fiscal 2022-23.