

BILL ANALYSIS

Senate Research Center

H.B. 1910
By: Chisum (Brown)
Natural Resources
5/11/1999
Engrossed

DIGEST

The Texas Low-Level Radioactive Waste Disposal Authority (authority) was created by the Texas Legislature in 1981 in response to federal law making each state responsible for the disposal of its own low-level radioactive waste. The authority was commissioned by Texas law to finance, construct, operate, and decommission, a disposal site for low-level radioactive waste produced in Texas. Following state legislative direction, the authority filed an application to permit a site in Sierra Blanca, Hudspeth County. This application was denied by the Texas Natural Resource Conservation Commission (TNRCC) on October 22, 1998, citing inadequate characterization of the fault referred to in the application and failure to adequately address the socioeconomic impacts of the proposed facility and associated transport of radioactive material. This bill would establish the Texas Low-Level Radioactive Waste Management Authority and define its role and authority with respect to methods of low-level radioactive waste management and disposal.

PURPOSE

As proposed, H.B. 1910 establishes the Texas Low-Level Radioactive Waste Management Authority and defines its role and authority with respect to methods of low-level radioactive waste management and disposal.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the board of directors of the Texas Low-Level Radioactive Waste Management Authority in SECTION 10 (Section 402.028, Health and Safety Code) and to the Texas Department of Health in SECTION 41 (Section 402.1511, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 401F, Health and Safety Code, by adding Section 401.214, as follows:

Sec. 401.214. REPORTING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. Requires the Texas Department of Health (TDH) to report to the legislature the location, character and amount of low-level radioactive waste stored or disposed of in the state, on the request of a member of the legislature. Requires TDH to post on the Internet information regarding the location, character, and amount of low-level radioactive waste stored or disposed of in the state and update the information at least annually.

SECTION 2. Amends Section 402.001, Health and Safety Code, as follows:

Sec. 402.001. SHORT TITLE. Provides that this chapter may be cited as the Texas Low-Level Radioactive Waste Management Authority Act, rather than the Texas Low-Level Radioactive Waste Disposal Authority Act.

SECTION 3. Amends Section 402.002, Health and Safety Code, to provide that the purpose of this chapter is to establish the Texas Low-Level Radioactive Waste Management Authority (authority), rather than the Texas Low-Level Radioactive Waste Disposal Authority with responsibility for assuring necessary disposal or assured isolation capability for specific categories of low-level radioactive waste. Makes conforming changes.

SECTION 4. Amends Section 402.003, Health and Safety Code, to define "assured isolation," "assured isolation site," "compact," "major amendment," and "party state." Redefines "authority," "operation," and

“host county.” Makes conforming changes.

SECTION 5. Amends Section 402.011, Health and Safety Code, as follows:

Sec. 402.011. New heading: TEXAS LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY. Makes a conforming change.

SECTION 6. Amends Section 402.012, Health and Safety Code, to make a conforming change.

SECTION 7. Amends Section 402.013(c), Health and Safety Code, to make a conforming change.

SECTION 8. Amends Section 402.020, Health and Safety Code, to make a conforming and a nonsubstantive change.

SECTION 9. Amends Section 402.021(b), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Section 402.028, Health and Safety Code, to authorize the board of directors of the authority (board) to use the design-build method for the construction of a disposal or assured isolation site facility. Requires the board to follow the procedures authorized by Section 51.780, Education Code, for institutions of higher learning, in using that method and entering into a contract for the services of a design-build firm. Authorizes the board to use a design-build-operate method for the construction and operation of a disposal or assured isolation site facility. Requires the board, if the board chooses this option, to follow the procedures authorized by Subsection (b) and requires the board, by rule, to adopt and require for the facility operator professional and performance qualifications that are substantially similar to the requirements for architects and engineers under Section 51.780, Education Code. Deletes text providing that this section does not apply to contracts for professional services. Makes conforming changes.

SECTION 11. Amends Sections 402.029(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 12. Amends Sections 402.031(a), (b), (d), and (e), Health and Safety Code, to make conforming changes.

SECTION 13. Amends Sections 402.032, Health and Safety Code, to make conforming changes.

SECTION 14. Amends Section 402.051, Health and Safety Code, as follows:

Sec. 402.051. New heading: JURISDICTION OVER DISPOSAL OR ASSURED ISOLATION SITE. Makes conforming and nonsubstantive changes.

SECTION 15. Amends Section 402.052, Health And Safety Code, as follows:

Sec. 402.052. New heading: DEVELOPMENT AND OPERATION OF DISPOSAL OR ASSURED ISOLATION SITE. Prohibits the authority from developing or operating an assured isolation site unless assured isolation at the site includes certain safeguards. Makes conforming changes.

SECTION 16. Amends Section 402.053, Health and Safety Code, to make a conforming change.

SECTION 17. Amends Section 402.058, Health and Safety Code, to make a conforming change.

SECTION 18. Amends Section 402.059(a), Health and Safety Code, to authorize the authority to enter public or private property to assess the suitability of land for assured isolation of low-level radioactive waste only with the prior written consent of the landowner, rather than only to enter to assess the suitability of land for a site in Hudspeth County.

SECTION 19. Amends Section 402.081, Health and Safety Code, as follows:

Sec. 402.081. New heading: SITE SELECTION STUDIES. Makes conforming changes.

SECTION 20. Amends Chapter 402D, Health and Safety Code, by adding Sections 402.0815 and 402.0816, as follows:

Sec. 402.0815. LOCATION OF SITE IN COUNTY BORDERING INTERNATIONAL BOUNDARY PROHIBITED. Prohibits a low-level radioactive waste disposal or assured isolation site from being located in a county adjacent to an international boundary.

Sec. 402.0816. LOCATION OF SITE IN AREAS OF CERTAIN AMOUNT OF ANNUAL RAINFALL PROHIBITED. Prohibits a low-level radioactive waste disposal or assured isolation site from being located in an area in which the average annual rainfall is greater than 26 inches.

SECTION 21. Amends Section 402.082, Health and Safety Code, to require studies required under Section 402.081 regarding assured isolation to consider certain factors. Makes conforming changes.

SECTION 22. Amends Section 402.083, Health and Safety Code, to require the authority to give preference to certain counties in choosing a site for further analysis. Prohibits the authority from choosing a site within certain counties in choosing a site for further analysis. Provides that a person is eligible to vote in a nonbinding referendum only if the person was eligible to vote in the most recent gubernatorial election in the county in which the nonbinding referendum is to be held. Authorizes a county to hold and requires a county to pay for a nonbinding referendum held as described by Subsection (b)(1). Sets forth the required language for the ballot. Requires the nonbinding referendum to be conducted as provided by the election Code, except that Section 41.001(a), Election Code does not apply. Defines “nonbinding referendum.”

SECTION 23. Amends Section 402.084, Health and Safety Code, as follows:

Sec. 402.084. New heading: EVALUATION OF POTENTIAL SITE. Makes conforming and nonsubstantive changes.

SECTION 24. Amends Section 402.085, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 25. Amends Section 402.086(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 26. Amends Sections 402.087(a) and (c), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 27. Amends Section 402.088(b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 28. Amends Section 402.089, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 29. Amends Section 402.090, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 30. Amends Section 402.091, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 31. Amends Section 402.092, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 32. Amends Section 402.0922, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 33. Amends Section 402.094, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 34. Amends Section 402.122, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 35. Amends Section 402.123, Health and Safety Code, to authorize the authority to enter onto certain land to conduct any studies of the proposed site required by TNRCC or TDH rule, rather than to enter to conduct a detailed technical characterization of the proposed disposal site. Makes conforming and nonsubstantive changes.

SECTION 36. Amends Section 402.124(b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 37. Amends Section 402.125(b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 38. Amends Section 402.126, Health and Safety Code, to require the authority to lease from the School Land Board on its terms and conditions the land determined by the School Land Board as necessary to serve as a rangeland and wildlife management area, rather than a buffer, for the disposal or assured isolation site. Makes conforming and nonsubstantive changes.

SECTION 39. Amends Section 402.128, Health and Safety Code, to prohibit TDH from lessening any standards for the siting, construction, or operation of a disposal or assured isolation site because the site is on state-owned land.

SECTION 40. Amends Section 402.151, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 41. Amends Section 402.1511, Health and Safety Code, as follows:

Sec. 402.1511. New heading: COMMISSION OR DEPARTMENT LICENSE. Provides that TDH has the sole authority to issue a license to operate an assured isolation site under this chapter. Authorizes TDH to adopt any rules reasonably necessary to exercise its authority under this section. Makes conforming changes.

SECTION 42. Amends Section 402.152, Health and Safety Code, to require TDH or TNRCC, as appropriate, to complete its review of the completeness and administrative sufficiency of the application within 60 days, rather than 30 days, of receipt of the application from the authority. Requires TDH to give notice and provide an opportunity for a public hearing in the manner provided by the agency's formal hearing procedure before TDH or TNRCC grants, renews, or makes a major amendment to a license for low-level radioactive waste. Makes conforming and nonsubstantive changes.

SECTION 43. Amends Section 402.154, Health and Safety Code, to authorize underground disposal to be considered for the management of low-level radioactive waste received from the compact states only if assured isolation is not found to be feasible. Makes conforming and nonsubstantive changes.

SECTION 44. Amends Section 402.155, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 45. Amends Section 402.181, Health and Safety Code, as follows:

Sec. 402.181. New heading: DISPOSAL OR ASSURED ISOLATION SITE CONSTRUCTION. Prohibits the authority from beginning construction of any part of work associated with a low-level radioactive waste disposal facility or assured isolation facility before the state has acquired ownership of the land for the facility. Provides that this subsection does not prohibit the authority from performing site characterizations on land not yet acquired by the state. Makes conforming and nonsubstantive changes.

SECTION 46. Amends Section 402.182, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 47. Amends Sections 402.183(a) and (b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 48. Amends Section 402.211, Health and Safety Code, as follows:

Sec. 402.211. New heading: MANAGEMENT AND OPERATION OF DISPOSAL OR ASSURED ISOLATION SITE. Makes conforming and nonsubstantive changes.

SECTION 49. Amends Section 402.212, Health and Safety Code, as follows:

Sec. 402.212. New heading: CONTRACT FOR OPERATION OF DISPOSAL OR ASSURED ISOLATION SITE. Makes conforming and nonsubstantive changes.

SECTION 50. Amends Section 402.213, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 51. Amends Section 402.214, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 52. Amends Section 402.215, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 53. Amends Section 402.216, Health and Safety Code, as follows:

Sec. 402.216. RULES RELATING TO DISPOSAL OR ASSURED ISOLATION SITE. Makes conforming and nonsubstantive changes.

SECTION 54. Amends Section 402.217, Health and Safety Code, as follows:

Sec. 402.217. New heading: SITE ACTIVITIES. Makes conforming and nonsubstantive changes.

SECTION 55. Amends Section 402.218, Health and Safety Code, to provide that on acceptance by the disposal or assured isolation site, title and liability for the low-level radioactive waste transfers to the authority. Makes conforming and nonsubstantive changes.

SECTION 56. Amends Section 402.219, Health and Safety Code, to authorize neither the board of the authority nor the contract operator to accept from a state other than Texas, Maine, or Vermont any low-level radioactive waste for disposal or assured isolation at a compact facility unless certain conditions are met. Provides that the total volume of low-level radioactive waste authorized to be accepted from other states other than Texas, Maine, and Vermont by Subsection (f)(2) is in addition to the amount authorized by and established under Section 3.04(11) of the compact. Authorizes an affected person to bring suit in district court in Travis County or in the county in which the site is located for a declaratory judgment or for injunctive or other equitable relief to enforce Subsection (f)(2). Provides that a successful plaintiff is entitled to court costs and reasonable attorney's fees. Makes conforming and nonsubstantive changes.

SECTION 57. Amends Sections 402.220(a), (c), and (d), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 58. Amends Section 402.221(b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 59. Amends Section 402.222, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 60. Amends Section 402.223, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 61. Amends Section 402.224(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 62. Amends Section 402.225, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 63. Amends Section 402.226(a), Health and Safety Code, to make conforming and

nonsubstantive changes.

SECTION 64. Amends Section 402.228, Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 65. Amends Chapter 402H, Health and Safety Code, by adding Section 402.229, as follows:

Sec. 402.229. STATE LIABILITY FOR PRIVATE SITE; CONTRACT REQUIREMENTS. Provides that the acceptance or storage of low-level waste at a site owned or operated by a private entity does not create any liability under state law on the part of the state or any agency or officer of the state for damages, removal, or remedial action with respect to the land, facility, or the accepted or stored waste. Requires a provision requiring the private entity to insure, hold harmless, or indemnify the state for any liability imposed on the state by state or federal law to be included in certain contracts, licenses, and permits.

SECTION 66. Amends Section 402.252(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 67. Amends Section 402.271, Health and Safety Code, to make conforming changes.

SECTION 68. Amends Section 402.272, Health and Safety Code, as follows:

Sec. 402.272. New heading: WASTE ACCEPTANCE FEES. Makes conforming and nonsubstantive changes.

SECTION 69. Amends Section 402.2721, Health and Safety Code, by amending Subsections (b)-(g) and adding Subsection (i), as follows:

(b) - (c) Makes conforming and nonsubstantive changes.

(d) Deletes the requirement that fees established under this section include minimum and maximum fees in a certain amount to pay for the costs of administering, implementing, and planning authorized activities. Makes conforming and nonsubstantive changes.

(e) Prohibits the fees assessed under this section from being assessed prior to a certain time, in a certain amount, or from being collected at a certain time.

(f) Deletes the requirement that the board assess, for the 1994-95 biennium only, a surcharge of 10 percent of the fee established for the 1992-93 biennium. Makes a nonsubstantive change.

(g) Requires surcharges assessed under Subsection (f), rather than Subsections (e) and (f), to be used to fund local public projects under Subchapter I.

(i) Requires the balance of the low-level waste fund attributable to planning and implementation fees to be transferred to a separate account in the fund and credited pro rata to generators who have paid planning and implementation fees, on termination of the imposition of fees under Subsection (d)(5). Requires certain generators to receive a credit equal to the amount of the generator's pro rata share in the account established under this section against waste acceptance fees the generator is required to pay under Section 402.272 until the balance of the generator's pro rata share in the account is exhausted. Provides that a generator who on the date the imposition of the fees is terminated owes planning and implementation fees is not eligible for the credit.

SECTION 70. Amends Section 402.273, Health and Safety Code, as follows:

Sec. 402.273. New heading: WASTE ACCEPTANCE FEE CRITERIA. Makes conforming and nonsubstantive changes.

SECTION 71. Amends Section 402.274, Health and Safety Code, to make conforming changes.

SECTION 72. Amends Section 402.275, Health and Safety Code, by amending Subsections (c), (d), and (f) and adding Subsections (h) and (i), as follows:

(c) Includes payments made by a party under Section 5.01, Health and Safety Code, of the compact among those monies that the authority is required to deposit to the credit of the low-level waste fund. Makes a conforming change.

(d) Makes conforming changes.

(f) Authorizes payments made by a party state under Section 5.01, Health and Safety Code, to be used only as provided by Subsection (h) or Section 402.277, Health and Safety Code.

(h) Requires the comptroller of public accounts (comptroller), upon receipt of a payment made by a party state, to transfer the payment to the low-level radioactive waste perpetual care fund.

(i) Requires the comptroller, notwithstanding the transfer required by Subsection (h), to retain in the low-level waste fund the first \$25 million received from payments by party states under Section 5.01 of the compact. Authorizes this money to be appropriated for the construction by the authority of a disposal or assured isolation site.

SECTION 73. Amends Chapter 402J, Health and Safety Code, by adding Section 402.277, as follows:

Sec. 402.277. LOW-LEVEL RADIOACTIVE WASTE PERPETUAL CARE FUND. (a) Provides that the low-level radioactive waste perpetual care fund (fund) is a special account in the treasury outside the general revenue fund.

(b) Sets forth the payments and deposits which constitute the fund.

(c) Requires interest earned on money in the fund to be credited to the fund.

(d) Authorizes the money in the fund to be appropriated only for the long-term care and maintenance of a state-owned facility for the disposal or assured isolation of low-level radioactive waste.

(e) Authorizes interest on money in the fund to be used for normal operating expenses of the authority as appropriated by the legislature. Prohibits the principal in the fund to be used for normal operating expenses of the authority, TNRCC, or TDH.

SECTION 74. Amends Sections 402.291(a) and (d), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 75. Amends Section 403.001(a), Health and Safety Code, to require one of the voting members of the compact commission be a legal resident of the host county, rather than of Hudspeth County.

SECTION 76. Repealers: Section 402.059(d), Health and Safety Code (regarding the power to enter property as it applies to property located in whole or in part in the area of Hudspeth County); Section 402.0921, Health and Safety Code (Site Area); Section 402.121 (Preference to School or University Land); Section 402.127, Health and Safety Code (Finding by Board of Regents Before Sale or Lease); and Section 402.129, Health and Safety Code (Report to Governor and Legislature on Siting).

SECTION 77. Requires the General Land Office to transfer to Sul Ross State University any land that was purchased before the effective date of this Act for a disposal site and for which a person was denied a license to dispose of waste at a site located on that land. Provides that the university is liable to any taxing entity for property taxes due on the land.

SECTION 78. Effective date: September 1, 1999.

SECTION 79. Emergency clause.

