

## BILL ANALYSIS

Senate Research Center

C.S.S.B. 1541  
By: Duncan  
Natural Resources  
4/20/2001  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Texas Health and Safety Code, Chapter 402, sets forth requirements for the siting, licensing, financing, construction, operation, decommissioning, and closure of a low-level radioactive waste disposal site. The original statute established the duties and functions of the Texas Low-Level Radioactive Waste Disposal Authority (Authority) and granted licensing authority to the Texas Natural Resource Conservation Commission (TNRCC or commission). Beginning in 1981, the Authority was charged with building and operating a site for the disposal of low-level radioactive waste generated in Texas. Texas later joined Maine and Vermont in the Texas Low-Level Radioactive Waste Disposal Compact (Texas Compact) for the disposal of low-level radioactive waste generated in all three states. The legislature designated a preferred siting area in Hudspeth County, but the Authority's license application was denied by the TNRCC in October 1998. H.B. 2954, 76th Legislature, abolished the Authority and transferred its functions to the TNRCC. Since the denial of the application in 1998, the state has taken no action to actively pursue methods to permanently manage nuclear waste generated from utilities, industry, and numerous medical and research operations in Texas.

C.S.S.B. 1541 modifies current statutes to provide for the permanent management of low-level radioactive waste through either assured isolation with later conversion for on-site disposal of the isolated waste or belowground disposal. The bill establishes procedures for the TNRCC to accept and assess multiple applications from private entities for the license to permanently manage Texas Compact waste. The bill also establishes the permanent management facility decommissioning account to cover costs associated with the end of facility operations and the assured isolation conversion account to cover associated costs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 5 (Sections 402.012, 402.014, 402.016, 402.020, 402.024, 402.034, 402.037, 402.038, and 402.039, Health and Safety Code), SECTION 8 (Sections 402.060, 402.061, 402.062, and 402.0605, Health and Safety Code), SECTION 9 (Sections 402.083, 402.084, 402.087, 402.088, Health and Safety Code), SECTION 11 (Section 402.093, Health and Safety Code), and SECTION 12 (Section 402.094, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 402, Health and Safety Code, by changing the heading to read as follows:

CHAPTER 402. PERMANENT MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE

SECTION 2. Amends Section 402.001, Health and Safety Code, to change the short title of Chapter 402 to "Permanent Management of Low-Level Radioactive Waste Act."

SECTION 3. Amends Sections 402.002(a) and (c), Health and Safety Code, to make conforming changes and to state that the purpose of Chapter 402 is to provide the Texas Natural Resource

Conservation Commission (commission) with the powers to ensure that the state has the capability to permanently manage specific categories of low-level radioactive waste. Deletes certain language providing the purpose of Chapter 402.

SECTION 4. Amends Sections 402.003 and 402.004, Health and Safety Code, as follows:

Sec. 402.003. DEFINITIONS. Adds definitions of “assured isolation,” “compact,” “compact commission,” “disposal,” “permanent management,” “permanent management facility,” “executive director,” and “federal facility waste.” Redefines “operation,” “bond,” and “host county.” Deletes definitions of “authority,” “board,” “contract operator,” “disposal site,” “rangeland and wildlife management plan,” and “management.”

Sec. 402.004. New heading: REFERENCES IN LAW TO TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY. Provides that a reference in the law to the Texas Low-Level Radioactive Waste Disposal Authority, the board of directors of the authority, or the general manager of the authority means the commission.

SECTION 5. Amends Chapter 402B, Health and Safety Code, as follows:

SUBCHAPTER B. New heading: LICENSING OF PERMANENT MANAGEMENT FACILITY

Sec. 402.011. LICENSE REQUIRED. Prohibits a person from disposing of or engaging in assured isolation of low-level radioactive waste (waste) or from accepting waste for disposal or assured isolation unless it is under certain conditions.

Sec. 402.012. LICENSING AUTHORITY. (a) Requires the commission to provide for receiving applications and issuing a single permanent management license (license). Authorizes the commission to issue a single license to a permanent management facility (facility) that meets certain requirements for disposal.

(b) Requires the commission by rule, except as provided by Subsection (c), to provide that the license authorize only the permanent management of waste in accordance with volumes and types established for acceptance under the Texas Compact.

(c) Requires the commission by rule to provide for issuing under the procedures provided by this chapter a single permanent management license that, in addition to the permanent management activities related to waste described by Subsection (b), would allow the license holder, under the same license, to dispose of federal facility waste at a separate facility adjacent to the facility for the disposal of waste described by Subsection (b).

Sec. 402.013. REGIONAL DISPOSAL FACILITY. Provides that the facility licensed under Chapter 402 is the Texas Compact facility.

Sec. 402.014. UNSUITABLE SITES. (a) Requires the commission by rule to adopt criteria for the designation of a site as unsuitable for assured isolation or disposal under this chapter, including criteria regarding certain risks.

(b) Requires the commission to prohibit permanent management at certain sites.

Sec. 402.015. NOTICE OF APPLICATIONS AND HEARINGS. Requires the commission, when prepared to accept applications for the license, to give to the secretary of state for publication in the Texas Register a notice that provides the beginning date that applications will be accepted for the proposed facility and that references the licensing requirements.

Sec. 402.016. APPLICATION PROCEDURES; NOTICE OF INTENT TO APPLY. (a) Requires the commission by rule to adopt procedures for handling applications under this subchapter.

(b) Requires the procedures to include appropriate procedures to assure fair and impartial communications between applicants or prospective applicants and the commission or commission staff during certain periods.

(c) Requires a prospective applicant to file with the commission a notice of intent to apply for a permanent management license under this chapter, together with a nonrefundable fee of \$100,000.00. Requires the notice of intent to identify the site for the proposed facility and each county in which any part of it is located. Requires the commission to apply a fee accepted under this section toward the prospective applicant's license application fee if the prospective applicant subsequently files a license application. Requires the commission to notify the commissioners court of each county in which any part of the site for the proposed facility is located of the receipt of the notice of intent under this section.

Sec. 402.017. APPLICATION REQUIREMENTS. (a) Requires a person to present an application on a prescribed form and pay an application fee in an amount set by the commission.

(b) Authorizes a person to apply for the license only under certain conditions. Requires documents establishing the ownership interest. Provides that this subsection does not apply if the commission is considering applications for a license to be issued for permanent management on property previously conveyed to the state under Section 402.031.

(c) Requires an application for the license to include certain information.

Sec. 402.018. ADMINISTRATIVELY COMPLETE APPLICATIONS. (a) Requires complete applications to be submitted on or before the 120th day after the date notice is published under Section 402.015. Requires the applications to address each of the criteria established under Sections 402.020-402.024.

(b) Requires the executive director to issue, on or before the 45th day after the date the application is received, an administrative notice of deficiency for each administratively incomplete application.

(c) Requires the commission to provide an applicant for whom an administrative notice of deficiency is issued not more than three opportunities to cure the application deficiencies on or before the 90th day after the date the first notice of deficiency is issued.

(d) Requires the executive director to reject any application which remains administratively incomplete after the period for correcting deficiencies has expired.

Sec. 402.019. TECHNICAL REVIEW OF APPLICATIONS; EXECUTIVE DIRECTOR RECOMMENDATION. Requires the executive director to have commission personnel or an independent contractor prepare a written evaluation of each complete application in terms of the criteria established under Sections 402.020-402.024.

(b) Requires the executive director to conduct at least one public meeting in each county, as applicable, to receive public comments on the administratively complete applications. Requires the executive director to set the time and place of the meetings

as soon as practicable after the close of the period for administrative review of the applications.

(c) Requires the executive director, after preliminary technical review is completed on all applications, to issue a technical notice of deficiency to each applicant whose application is determined by the executive director to be technically insufficient.

(d) Requires the executive director to provide an applicant for whom a technical notice of deficiency is issued two opportunities to cure the noted deficiencies in the application on or before the 60th day after the date the technical notice of deficiency is issued.

(e) Requires the executive director to use the written evaluations and application materials to evaluate each application according to the above criteria and to evaluate each application for the purposes of comparing the relative merit of the applications, giving certain weight to each criterion.

(f) Requires the executive director, based upon the written evaluations and application materials, to select the application which has the highest comparative merit.

(g) Authorizes the executive director, if in the opinion of the executive director, the application with the greatest merit is still technically insufficient, to issue additional technical notices of deficiency if necessary to permit the executive director to declare the application technically sufficient and issue a draft license.

(h) Requires the executive director to complete the preparation of the draft license no later than 15 months from the date the technical review begins; or, if the executive director concludes that a draft license cannot be prepared based upon the application, the application is to be returned and the executive director is authorized to process the next most meritorious application.

Sec. 402.020. TIER 1 CRITERIA. (a) Requires the commission by rule to adopt tier 1 criteria to evaluate both natural site characteristics and the adequacy of financial assurance to the facility.

(b) Requires that the criteria for evaluating natural site characteristics include certain factors.

(c) Requires the criteria to assess the adequacy of the proposed facility to include certain factors.

(d) Requires the financial assurance criteria to include certain factors.

(e) Authorizes the commission, in adopting financial assurance criteria, to consider the different life cycle costs and different expenditures necessary for an assured isolation facility as compared to a disposal facility.

Sec. 402.021. TIER 2 CRITERIA. Requires the commission to adopt tier 2 criteria to evaluate certain factors.

Sec. 402.022. TIER 3 CRITERIA. Requires the commission to adopt tier 3 criteria to evaluate certain qualifications of the applicant.

Sec. 402.023. TIER 4 CRITERIA. Requires the commission to adopt tier 4 criteria to evaluate land use compatibility and socioeconomic effects of the facility on the host county and

adjacent counties.

Sec. 402.024. **ADDITIONAL CRITERIA.** Authorizes the commission by rule to adopt other criteria to protect the public health or safety or the environment and requires the commission to specify for each additional criterion the tier within which the criterion will be weighed.

Sec. 402.025. **PROPOSED RECOMMENDATION FOR LICENSING HEARING.** (a) Requires the executive director, immediately on completing the technical review under Section 402.019, to carry out certain duties relating to a proposed recommendation.

(b) Requires the chief clerk of the commission, upon issuance of the draft license and proposed recommendation with written assessment, to refer the application to the State Office of Administrative Hearings for a contested case on the license application.

(c) Sets forth provision relating to the publishing of notice of the draft license.

Sec. 402.026. **CONTESTED CASE; FINAL ACTION ON APPLICATION.** (a) Requires an administrative law judge to conduct a contested case hearing on the application and draft license sent to the office under Section 402.025(b) on the issue of whether the application should be approved according to the weighted criteria. Requires at least part of the hearing to be held in the county in which the proposed facility will be located.

(b) Prohibits the administrative law judge from admitting as a party to the contested case hearing a person other than the applicant, the executive director, or a person that demonstrates certain characteristics.

(c) Requires the administrative law judge to issue a proposal for decision not later than the first anniversary of the date the case was referred under Section 402.025(b).

(d) Requires the commission to take final action on the proposal for decision of the administrative law judge on or before the 90th day after the date of the proposal.

Sec. 402.027. **MEDIATION.** (a) Authorizes the administrative law judge to appoint one or more mediators to facilitate the settlement of disputes among parties to the hearing under Section 402.028.

(b) Authorizes the administrative law judge to provide for mediation sessions before or during the hearing.

Sec. 402.028. **JUDICIAL REVIEW.** (a) Authorizes a person affected by an action of or by inaction of the executive director or the commission, notwithstanding any other law, including Chapter 5I (Judicial Review), Water Code, to file a petition for review, but only after the commission takes final action on a license application under Section 402.028(d). Requires a petition to be filed not later than the 30th day after the date of the final action.

(b) Prohibits a court, in its review of an action under this subchapter, from substituting its judgment for the judgment of the executive director of the commission on weight of the evidence, but it authorizes to affirm the action in whole or part and requires it to reverse or remand the case for further proceedings under certain conditions.

Sec. 402.029. **ISSUANCE OF LICENSE; CONVEYANCE OF FACILITY.** (a) Authorizes the commission to issue the license to the applicant only after the applicant has conveyed to the state in fee at no cost to the state all right, title, and interest to the land on which the proposed facility is to be located. Provides that if the license to be issued would allow the disposal of federal facility waste at a separate adjacent facility, the property required to be conveyed under this section is limited to the property used for disposal of waste

described by Section 402.012(b). Authorizes title to the separate adjacent facility for disposal of federal facility waste to be transferred only as provided by federal law and by the contract executed as required by Section 402.032(c).

(b) Provides that the transfer of property under this section does not relieve the license holder from liability for an act or omission performed before the property transfer or while the property is in the possession and control of the license holder.

(c) Provides that the title and all related rights and interest in property conveyed under this section are the property of the commission on the state's behalf and authorizes the commission to administer the property in the name of the state.

Sec. 402.030. LICENSE CONDITIONS. (a) Requires that the license specify certain conditions relating to the commission's authority.

(b) Prohibits the license holder from taking any action under the license prior to its acquisition of all needed federal or state licenses or other authorizations.

(c) Prohibits the license from authorizing the license holder to accept federal facility waste at the separate adjacent facility unless the license holder and the secretary of energy have executed a binding contract, with terms accepted by the executive director, under which the secretary of energy is required, as provided by Section 151(b) of the federal Nuclear Waste Policy Act of 1982 (42 U.S.C. Section 10171), as amended, assume title and custody of the waste accepted and disposed of at the separate adjacent facility and the land on which the waste is disposed of.

Sec. 402.031. TERM OF LICENSE. Provides that the license expires on the 35th anniversary of the date of its issuance.

Sec. 402.032. FINANCIAL SECURITY. (a) Provides that in this section "security" has the meaning assigned by Section 401.109(c).

(b) Requires the commission to require the license holder to provide financial security acceptable to the commission to assure performance of the license holder's obligations under this chapter and rules adopted under this chapter.

(c) Requires the amount and type of security required to be determined as provided by commission rules in accordance with certain criteria specified by those rules.

Sec. 402.033. REVIEW OF QUALIFICATIONS AND SECURITY. Requires the commission to reevaluate annually the financial qualifications of and security provided by the license holder. Authorizes the reevaluation to coincide with license renewal procedures in the year the license is scheduled to expire.

Sec. 402.034. LICENSE NOT TRANSFERABLE. Provides that the license is not transferable.

Sec. 402.035. RENEWAL OF LICENSE. (a) Authorizes the commission to renew a license for a period not to exceed 10 years.

(b) Requires the commission by rule to adopt reasonable procedures for license renewal and requires the rules to include certain information.

(c) Requires the commission to give public notice of and hold at least one public meeting on the renewal application in the county in which the facility is located.

Provides that a meeting under this subsection is not a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code.

(d) Requires the license holder to post notice of the meeting during the three weeks preceding the meeting at certain locations.

(e) Requires the license holder to publish notice of the meeting in the newspaper with the greatest circulation that is published in the county in which the facility is located at least once each week during the three weeks preceding the public meeting. Requires the license holder to publish the notices in a newspaper of general circulation in the county, if no newspaper is published in the county.

Sec. 402.036. LICENSE AMENDMENTS. (a) Authorizes the commission on its own motion or on application by the license holder to amend the permanent management license after a public hearing. Requires the commission to give notice of the hearing by publication in the Texas Register and in a newspaper of general circulation in the county in which the facility is located on or before the 30th day before the date of the hearing.

(b) Requires the commission to provide for the opportunity for a contested case proceeding if the proposed amendment constitutes a major amendment under commission rules.

(c) Requires the commission by rule to adopt standards and procedures for amending the license.

(d) Requires the commission to ensure that any amendment of the license does not contravene federal requirements or state laws.

(e) Authorizes an amendment to take effect immediately upon final commission action.

Sec. 402.037. LICENSES AND RULES TO COMPLY WITH FEDERAL STANDARDS. Authorizes the commission to adopt rules and amend a license as necessary for compliance with federal standards for facilities and sites for the disposal of waste, including federal facility waste, and for assured isolation of waste intended for conversion to on-site disposal.

Sec. 402.038. APPROVAL BY REFERENDUM OR ELECTION. (a) Requires a commissioners court to carry out certain duties not later than the 30th day after the court receives notice from the commission under Section 402.016(c) that a prospective applicant for a license has filed a notice of intent under that section.

(b) Requires the commissioners court to call an election on the question of whether the voters of the county approve of the construction and operation of the facility in the county under certain conditions.

(c) Requires the election to be held as provided by the Election Code, except that Section 41.001(a), Election Code, does not apply to the election. Requires the election to be held not later than the 45th day after the date on which the order to hold the election is issued.

(d) Requires the ballot to be printed to permit a person to vote for or against the proposition and sets forth specific wording to be contained on the ballot.

(e) Requires the commissioners court to certify whether a proposed facility described by a ballot proposition is approved by a majority of votes cast in the election not later than the 10th day after the date of the election.

Deletes existing Sections 402.011 and 402.013-402.032, Health and Safety Code.

SECTION 6. Amends the heading to Chapter 402C, Health and Safety Code, to read as follows:

SUBCHAPTER C. ADMINISTRATIVE CONTROL

SECTION 7. Amends Sections 402.051, 402.053, 402.054, and 402.057-402.059, Health and Safety Code, as follows:

Sec. 402.051. New heading: JURISDICTION OVER PERMANENT MANAGEMENT FACILITY. (a) Requires that the commission, rather than the Texas Low-Level Radioactive Waste Disposal Authority, has exclusive statewide jurisdiction over the site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of a facility.

(b) Authorizes the commission to take any action regarding waste that is necessary to protect public health and safety and the environment, including monitoring or maintenance of permanent management activities and measures to prevent or alleviate an emergency involving waste.

Sec. 402.053. GENERAL POWERS. Makes conforming changes.

Sec. 402.054. RULES, STANDARDS, AND ORDERS. Adds language relating to the protection of public health and safety and the environment from the activities required for permanent management. Makes conforming changes.

Sec. 402.057. REPORTS TO LEGISLATURE. Adds language to specify the report to be over the commission's operations under this chapter. Makes conforming changes.

Sec. 402.058. HEALTH SURVEILLANCE SURVEY. Changes reference from "board" to "department" and makes conforming changes.

Sec. 402.059. POWER TO ENTER PROPERTY. Deletes references to a disposal site in Hudspeth County and makes conforming changes.

SECTION 8. Amends Chapter 402C, Health and Safety Code, by adding Sections 402.060-402.063, as follows:

Sec. 402.060. METHODS AND PROCEDURES FOR PERMANENT MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE AND DISPOSAL OF FEDERAL FACILITY WASTE. Requires the commission by rule to prescribe acceptable permanent management methods and procedures. Requires the rules to be designed to protect public health and the environment from hazards presented by the radioactive and nonradioactive characteristics of waste during and after its disposal or assured isolation and in case of failure to contain the waste during or after its disposal or assured isolation.

(b) Requires the TNRCC to prohibit by rule the disposal of waste as the waste is received at the facility by burial in an unlined land disposal unit with no technical enhancements designed to contain low-level radioactive waste.

(c) Requires the commission by rule to prohibit the disposal of waste in a landfill below the natural level of a facility site unless specific regulatory and technical conditions are met.

Sec. 402.0605. FEDERAL FACILITY WASTE DISPOSAL. (a) Requires the commission by rule to provide that a facility, the permit for which allows the disposal of federal facility waste, is authorized to accept federal facility waste for disposal only at a separate and distinct facility adjacent to the facility at which permanent management of waste described by Section 402.012(b) is conducted. Requires the adjacent facilities to be separated by a distance of not less than 440 yards and not more than a distance determined by the commission.

(b) Sets forth provisions relating to the restriction of the amount and type of federal facility waste the license holder is authorized to accept.

(c) Sets forth provisions relating to the commission providing separate rules for the management and disposal of federal facility waste at the separate adjacent facility.

(d) Requires the rules to provide that the facility is prohibited from commingling waste described by Section 402.012(b) with federal facility waste.

Sec. 402.061. DETERMINATION OF NECESSARY PERMANENT MANAGEMENT CAPACITY. Requires the commission, with the assistance of the compact commission, by rule to determine the capacity for permanent management to meet the terms of the compact and the needs presented by waste generated in this state. Authorizes the commission to revise the capacity determination to meet changed conditions or new information according to specified criteria.

Sec. 402.062. CRITERIA FOR QUALIFIED PERMANENT MANAGEMENT FACILITY. (a) Requires the commission by rule to establish standards and criteria that the site and on-site improvements of the facility must meet to qualify for licensing of disposal or assured isolation of waste. Requires the criteria and standards to be at least as stringent as the federal requirements for disposal. Authorizes the commission by rule to impose specific design criteria or performance-based design criteria for the facility's improvements.

(b) Requires the standards and criteria to address certain factors affecting the facility's adequacy to safely contain disposed, isolated, or managed low-level waste.

(c) Requires the commission to set standards and require safeguards against hazards from local conditions, including certain risks.

Sec. 402.063. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE. (a) Authorizes the commission to require the holder of the license to pay annually an amount as determined by the commission if continuing or perpetual maintenance, surveillance, or other care that is required after licensed activities have terminated. Requires the commission to require payments to be deposited in the facility decommissioning account and to be subject to annual commission review.

(b) Requires the commission to annually review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the facility requires or may require in the future.

(c) Authorizes the commission to review estimates of costs that are required to be incurred under this chapter in accordance with certain factors.

(d) Requires the commission to set the charges for maintenance and perpetual care an amount consistent with existing technology.

(e) Prohibits the commission from imposing charges that exceed the amount that the

commission projects to be required for necessary care required after the licensed activity is terminated.

(f) Prohibits an increase in costs from being applied retroactively but authorizes them to apply to increases in subsequent annual payments.

SECTION 9. Amends Chapter 402D, Health and Safety Code, as follows:

SUBCHAPTER D. New heading: OPERATION OF PERMANENT MANAGEMENT FACILITY

Sec. 402.081. CONVEYANCE OF WASTE. (a) Requires the license holder to convey to the state at no cost to the state the title to the waste delivered to the facility Provides that this section does not apply to federal facility waste accepted under rules and permit provisions allowing for federal facility waste to be disposed of at the facility.

(b) Provides that transfer of waste under this section does not relieve the license holder of liability for an act or omission before the transfer or while the waste is in the possession and control of the license holder.

(c) Provides that the title and all related rights and interest in waste conveyed under this section are the property of the commission on the state's behalf. Authorizes the commission to administer the waste as state property.

Sec. 402.082. EXCLUSIVE USE OF SITE. Requires that the facility site be used only for permanent management of waste under Chapter 402 until the commission determines that another use would not endanger the health, safety, or welfare of the public or the environment.

Sec. 402.083. CONSTRUCTION AT PERMANENT MANAGEMENT FACILITY. (a) Requires the license holder to be responsible for constructing facilities and improvements at the facility. Authorizes the license holder to engage a contractor in accordance with commission rules.

(b) Requires the commission to review construction plans for facilities or improvements for the facility to ensure compliance with Section 402.062 criteria. Authorizes the commission to order the license holder to revise its construction plans in accordance with those criteria.

(c) Requires the commission to monitor all construction at the facility and is authorized to have construction work inspected by specialized personnel.

(d) Requires the commission by rule to prohibit any major construction relating to the license until the applicable hearing is completed and the license or amendment is issued.

Sec. 402.084. COMMISSION AUTHORITY OVER FACILITY OPERATION. (a) Requires the commission to ensure that facility operations comply with applicable state and federal laws, regulations, and standards.

(b) Authorizes the commission by rule or by conditions stated in the license to regulate any aspect of the operation of the facility in order to protect the public health or safety or the environment.

(c) Authorizes the commission to take or order the facility to take certain actions.

(d) Authorizes the commission, in an emergency related to the permanent management facility operation, to impound waste or other material delivered or intended for delivery

to the facility.

Sec. 402.085. RESIDENT INSPECTOR. (a) Requires the commission to employ one or more resident inspectors to continuously monitor conditions of and operations at the facility.

(b) Requires the license holder to provide facilities for each resident inspector at the facility and to cooperate fully with the activities of each inspector.

(c) Authorizes a resident inspector to report any matter to the commission for investigation or enforcement.

Sec. 402.086. OUT-OF-STATE WASTE AND MIXED WASTE. (a) Defines “mixed waste.”

(b) Prohibits the license holder, except as provided by Subsection (c) or (d), from accepting low-level radioactive waste generated in another state or mixed waste.

(c) Authorizes the license holder to accept waste generated in another state if the waste is accepted under the compact.

(d) Authorizes the license holder, if the license allows the disposal of federal facility waste, to accept for disposal at the separate adjacent facility for federal facility waste certain specified forms of waste.

(e) Requires the license holder, in handling and disposing of mixed waste described by Subsection (d)(2), to comply with the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended, Chapter 361, and this chapter.

Sec. 402.087. EMERGENCY RESPONSE PLANNING. (a) Requires the license holder to develop and implement an emergency response plan in accordance with rules of the commission and the department.

(b) Requires the license holder to cooperate with and seek the cooperation of federal agencies responsible for regulating waste disposal or management sites and of federal, state, and local agencies engaged in disaster relief activities.

(c) Requires the license holder to ensure that emergency response facilities and equipment are available and in operation before facility operations begin.

(d) Authorizes the commission to require the license holder to construct facilities and procure equipment required to provide fire, police, and emergency medical services needed to support the facility. Requires that the commission rules provide certain standards relating to location of emergency equipment.

Sec. 402.088. GROUNDWATER PROTECTION. (a) Requires the commission by rule to adopt and enforce groundwater protection standards for the facility that are compatible with federal standards adopted under the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.).

(b) Requires the commission, in adopting rules related to standards regarding nonradioactive constituents, to consider the compatibility of those standards with the commission’s groundwater protection standards adopted under other programs.

Sec. 402.089. OPERATIONS AFTER LICENSE EXPIRATION, SUSPENSION, OR REVOCATION. (a) Authorizes the commission to take necessary action to ensure facility

safety in the absence of a license holder if either the license expires and a renewed license has not been issued on the license expiration date or the license is revoked or suspended.

(b) Requires a person whose license has expired or has been revoked or suspended, to comply with commission orders related to facility activities.

(c) Authorizes the commission by order to authorize a person whose license has expired to operate the facility in accordance with commission orders until the commission issues another license to operate the facility.

Sec. 402.090. DECOMMISSIONING AND CLOSING PERMANENT MANAGEMENT FACILITY. Requires that the license holder close and decommission the facility in compliance with all applicable federal and state laws, rules and standards if the commission finds after notice and hearing that the facility should be closed.

Sec. 402.091. EMERGENCY ORDERS. (a) Authorizes the commission to issue an order requiring immediate action if an emergency exists and threatens public health and safety. Authorizes the emergency order to be issued without notice or hearing.

(b) Provides that the emergency order is immediately effective.

(c) Requires a person to whom the order is directed to comply immediately.

(d) Requires the commission to provide a person to whom the order is directed an opportunity for a hearing on written application to the agency not later than the 30th day following the date the order is issued.

(e) Requires the commission to hold a requested hearing not earlier than the 11th day and not later than the 20th day after the date of receipt of the hearing application.

(f) Requires the commission to continue, modify, or revoke the order based on the hearing.

Sec. 402.092. CORRECTIVE ACTION AND MEASURES. (a) Authorizes the agency, if the commission finds a threat to public health and safety and the environment and the license holder is unable to remove the threat, to order that action be taken to remove the threat without notice or a hearing.

(b) Requires the commission to use the security provided under Section 402.034 to pay for actions taken according to an order issued under this section.

Deletes existing Sections 402.081-402.094, Health and Safety Code.

SECTION 10. Amends Chapter 402D, Health and Safety Code, by adding Sections 402.100 and 402.101, as follows:

Sec. 402.100. RESPONSIBILITIES REGARDING DISPOSAL OF FEDERAL FACILITY WASTE. Requires a license holder that accepts federal facility waste for disposal under the license to perform certain duties.

Sec. 402.101. LIABILITY IN RELATION TO FEDERAL FACILITY WASTE. (a) Provides that this state and any agency or officer of this state are not liable for any damages with respect to the land or facility at which federal facility waste is accepted under this chapter or with respect to the federal facility waste and is not liable for costs associated with removal or remediation at the land or facility at which federal facility waste is accepted under this chapter

or with respect to federal facility waste.

(b) Requires the license, to the extent it allows the acceptance of federal facility waste, to require the owner or operator of the separate adjacent facility at which the federal facility waste may be accepted to insure and indemnify this state for any liability imposed on this state or any agency or officer of this state because of activities related to the acceptance or disposal of federal facility waste.

SECTION 11. Transfers Section 402.216, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.093, Health and Safety Code, and amends it as follows:

Sec. 402.093. New heading: RULES RELATING TO PERMANENT MANAGEMENT FACILITY. (a) Makes conforming changes.

(b) Requires the commission by rule to exclude types of waste that are incompatible with permanent management operations at the facility.

SECTION 12. Transfers Section 402.217, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.094, Health and Safety Code, and amends it as follows:

Sec. 402.094. New heading: PROCESSING AND PACKAGING FACILITIES. Requires the commission by rule to require the facility to have on-site, as necessary, facilities for processing and packaging waste for disposal or assured isolation. Deletes language relating to disposal site activities.

SECTION 13. Transfers Section 402.221, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.095, Health and Safety Code, changes references from “radioactive waste” to “low-level radioactive waste,” and amends it to make a conforming change.

SECTION 14. Transfers Section 402.222, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.096, Health and Safety Code, and amends it to make conforming changes.

SECTION 15. Transfers Section 402.223, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.097, Health and Safety Code, and amends it to make conforming changes.

SECTION 16. Amends Sections 402.252(a), (c), and (d), Health and Safety Code, to add new language to Subsection (a) and to make conforming changes.

SECTION 17. Amends Sections 402.271 and 402.272, Health and Safety Code, as follows:

Sec. 402.271. New heading: COMMISSION EXPENSES. Adds language to specify that the commission’s expenses under this chapter shall be paid from waste disposal fees collected by the commission under Section 402.272 and from money in the low-level radioactive waste fund derived from planning and implementation fees deposited in that fund and the interest earned on that money. Makes conforming changes.

Sec. 402.272. WASTE DISPOSAL FEES. Adds new language to Subsection (a) to provide that this section does not apply to a person who delivers federal facility waste to the facility if the facility is allowed under its license to dispose of federal facility waste, and authorizes the license holder to establish processing and packaging fees for federal facility waste accepted

under the license. Makes conforming changes.

SECTION 18. Amends Sections 402.273 and 402.274, Health and Safety Code, as follows:

Sec. 402.273. WASTE DISPOSAL FEE CRITERIA. Adds language authorizing the holder of the license and compact generators to petition the commission for a change in the fee amount determined under this section and makes conforming changes.

Sec. 402.274. PROCESSING AND PACKAGING FEES. Makes conforming changes.

SECTION 19. Amends Chapter 402J, Health and Safety Code, by adding Sections 402.2744 and 402.2745, as follows:

Sec. 402.2744. PERMANENT MANAGEMENT FACILITY DECOMMISSIONING ACCOUNT. (a) Requires the commission to carry out certain duties relating to the permanent management facility decommissioning account (account).

(b) Requires the commission, each biennium, to review the balance of the account and the amount of interest the account generates. Sets forth other provisions relating to the balance of the account.

(c) Provides that the account is an account in the general revenue fund. Authorizes money in the fund to only be used to pay certain costs. Requires interest earned on money in the account to be deposited to the credit of the account. Provides that the account is exempt from the application of Section 403.095(Use of Dedicated Revenue), Government Code.

(d) Sets forth provisions if the facility is licensed to dispose of federal facility waste at a separate adjacent facility.

Sec. 402.2745. ASSURED ISOLATION CONVERSION ACCOUNT. (a) Provides that this section only applies if the facility licensed under Subchapter B is an assured isolation facility.

(b) Requires the commission to carry out certain duties relating to the assured isolation conversion account (account).

(c) Requires the commission, each biennium, to review the balance of the account and the amount of interest the account generates. Sets forth other provisions relating to the balance of the account.

(d) Provides that the account is an account in the general revenue fund. Authorizes money in the fund to only be used to pay costs of converting an assured isolation facility licensed under Subchapter B to a low-level radioactive waste disposal facility. Requires interest earned on money in the account to be deposited to the credit of the account. Provides that the account is exempt from the application of Section 403.095, Government Code.

SECTION 20. Amends Sections 402.275(c) and (d), Health and Safety Code, as follows:

(c) Adds language to require certain fees to be deposited to the credit of the low-level radioactive waste fund (waste fund) except as provided by Sections 402.2744 and 402.2745 and makes conforming changes.

(d) Adds language to authorize money in the waste fund to be used to pay costs of the commission to plan, implement, and administer activities under this chapter before the facility

begins operating and makes conforming changes.

SECTION 21. Amends Sections 402.291-402.296 and 402.298, Health and Safety Code, as follows:

Sec. 402.291. AUTHORITY TO ISSUE BONDS. (a) Authorizes the commission to issue, sell, and provide for the retirement of revenue bonds to finance necessary actions the commission may take in order to ensure the safety of the facility in the absence of the license holder or the operation of a permanent management facility by the commission in the event the commission must operate the facility because there is no license holder, or reimburse the license holder for the costs of constructing the permanent management facility. Deletes language relating to the commission reimbursing the general revenue fund. Makes conforming changes.

(b) Authorizes the commission to reimburse the license holder for construction costs only if the facility is an assured isolation facility.

(c)-(e) Makes conforming changes.

Sec. 402.292. New heading: AUTHORIZATION OF BONDS. Changes reference from Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, V.T.C.S.) to Chapter 1204, Government Code, and makes conforming changes.

Sec. 402.293. APPROVAL OF BONDS. Changes references from Article 3, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, V.T.C.S.) and Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987, (Article 717k-7, V.T.C.S.) to Chapters 1202 and 1231, Government Code. Makes conforming changes.

Sec. 402.294. SALE OF BONDS; PROCEEDS OF SALE. Makes conforming changes.

Sec. 402.295. REFUNDING BONDS. Changes reference from Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, V.T.C.S.) and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, V.T.C.S.). Makes conforming changes.

Sec. 402.296. BONDS AS INVESTMENTS AND AS SECURITY FOR DEPOSITS. Makes a conforming change.

Sec. 402.298. BONDHOLDER REMEDIES. Makes conforming changes.

SECTION 22. Amends Sections 401.003(14)-(27), Health and Safety Code, to add a definition of “permanent management” and to delete the definition of “radioactive substance.”

SECTION 23. Amends Section 401.005, Health and Safety Code, to provide that references to the Code of Federal Regulations in Chapter 401 refer to it as it existed on September 1, 2001, rather than September 1, 1999.

SECTION 24. Amends Sections 401.011(a) and (b), Health and Safety Code, as follows:

(a) Provides that the Texas Radiation Control Agency has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b), Subchapter K, and Chapter 402.

(b) Adds language to provide that the commission has jurisdiction to regulate and license the permanent management of low-level radioactive waste as provided by Chapter 402, and the disposal of by-product material, naturally occurring radioactive material waste except oil and

gas NORM waste, source material, and special nuclear material.

SECTION 25. Amends Section 401.015(c), Health and Safety Code, to make a conforming change.

SECTION 26. Amends Sections 401.052(b) and (d)-(f), Health and Safety Code, to add language to require rules adopted under this section to provide that a shipper is required to comply immediately with an order of the board made in response to an alleged violation of a rule adopted under this section if the order directs immediate compliance, and if a shipper who was subject to an order that directed immediate compliance applies for a hearing on the alleged violation before the 21st day after the date the order was issued, the board is required to provide a hearing on the alleged violation not later than the 30th day after the date the application is received. Prohibits fees under this section from exceeding \$10 per cubic foot of shipped waste and are required to be collected by the commission and deposited to the credit of the radiation and perpetual care fund, and be used exclusively by the department for certain purposes. Redefines “shipper” and deletes definition of “authority.”

SECTION 27. Amends Section 401.058(c), Health and Safety Code, to make conforming changes.

SECTION 28. Amends Section 401.061, Health and Safety Code, to make a conforming change.

SECTION 29. Amends Section 401.063(a), Health and Safety Code, to make conforming changes.

SECTION 30. Transfers Section 401.067, Health and Safety Code, to Chapter 402D, Health and Safety Code, as amended by this Act, redesignates it as Section 402.099, Health and Safety Code, and amends it to make a conforming change.

SECTION 31. Amends Section 401.101, Health and Safety Code, to add language providing that a person is prohibited from certain activities, except as provided by Subsection (b) and unless the person has a license, registration, or exemption from the department or commission as provided by this chapter or, if the source is low-level radioactive waste, a license issued under Chapter 402 that authorizes the activity. Adds language prohibiting a person from receiving waste from other persons for permanent management unless that person has a license issued under Chapter 402 that authorizes the activity.

SECTION 32. Amends Section 401.104(b), Health and Safety Code, to make a conforming change.

SECTION 33. Amends Section 401.108(c), Health and Safety Code, to delete reference to Subchapter F regarding the commission reevaluating every five years the qualifications and security provided by a license holder under that subchapter or Subchapter G.

SECTION 34. Amends Section 401.109(b), Health and Safety Code, to make a conforming change.

SECTION 35. Amends Section 401.111, Health and Safety Code, as follows:

Sec. 401.111. New heading: CRITERIA FOR CERTAIN UNSUITABLE NEW SITES FOR PROCESSING LOW-LEVEL RADIOACTIVE WASTE. Makes conforming changes to have this section apply only to the board rather than the board and the commission.

SECTION 36. Amends Section 401.112, Health and Safety Code, as follows:

Sec. 401.112. New heading: LOW-LEVEL RADIOACTIVE WASTE PROCESSING LICENSE APPLICATION AND CONSIDERATIONS. Makes conforming changes.

SECTION 37. Amends Sections 401.113(a) and (b), Health and Safety Code, to make conforming changes.

SECTION 38. Amends Section 401.114, Health and Safety Code, to make conforming changes.

SECTION 39. Amends Section 401.115, Health and Safety Code, to make a conforming change.

SECTION 40. Amends Sections 401.116(a), (b), and (d), Health and Safety Code, to make conforming changes.

SECTION 41. Amends Section 401.117, Health and Safety Code, to make conforming changes.

SECTION 42. Amends Section 401.151, Health and Safety Code, to make conforming changes.

SECTION 43. Amends Section 401.152, Health and Safety Code, to make conforming changes.

SECTION 44. Amends Section 401.153(b), Health and Safety Code, to make conforming changes.

SECTION 45. Amends Section 401.301(b), Health and Safety Code, to delete language relating to expenses incurred to collect payments to the waste fund and general revenue as provided by Section 402.2721.

SECTION 46. Amends Sections 401.303(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 47. Amends Section 401.381(a), Health and Safety Code, to make conforming changes.

SECTION 48. Amends Section 401.382(a), Health and Safety Code, to make a conforming change.

SECTION 49. Amends Section 401.383(a), Health and Safety Code, delete language relating to a license that authorizes certain activity issued under this chapter.

SECTION 50. Amends Section 401.412(a), Health and Safety Code, to make conforming changes.

SECTION 51. Amends Section 403.001(a), Health and Safety Code, to change reference from Hudspeth County, Texas, to a “host county” as it is defined by Section 2.01, Article II, Texas Low-Level Radioactive Waste Disposal Compact (Section 403.006, Health and Safety Code).

SECTION 52. Amends Section 7.033, Water Code, as follows:

Sec. 7.033. New heading: RECOVERY OF SECURITY FOR VIOLATION OF CHAPTER 401 OR 402, HEALTH AND SAFETY CODE. Adds language requiring the Texas Natural Resource Conservation Commission (commission) to seek reimbursement, either by commission order or by a suit filed under Subchapter D by the attorney general at the commission’s request, of security from the facility decommissioning account used by the commission under Section 402.092, Health and Safety Code.

SECTION 53. Amends the heading to Section 7.111, Water Code, to read as follows:

Sec. 7.111. RECOVERY OF SECURITY FOR VIOLATION OF CHAPTER 401 OR 402, HEALTH AND SAFETY CODE.

SECTION 54. Amends Section 7.184(a), Water Code, to provide that a person commits an offense if the person intentionally or knowingly violates a provision of Chapters 401 or 402, Health and Safety Code, other than the offense described by Subdivision (2) or intentionally or knowingly receives, processes, packages, concentrates, stores, transports, undertakes assured isolation, retrieves, reuses, or disposes of waste without or in violation of a license issued by the commission under Chapters 401 or 402, Health and Safety Code. Makes conforming changes.

SECTION 55. Amends Section 7.303, Water Code, to add language relating to grounds under which the commission may carry out certain duties to include violating a provision of Chapter 401, Health and Safety Code, or a commission rule, relating to an activity under the commission's jurisdiction; and violating Chapter 402, Health and Safety Code, or another law applicable to the license holder or violating a commission rule governing the processing, packaging, storage, assured isolation, or disposal of low-level radioactive wastes.

SECTION 56. Amends Chapter 7G, Water Code, by adding Section 7.311, as follows:

Sec. 7.311. EMERGENCY SUSPENSION AND CORRECTIVE ACTION ORDER FOR PERMANENT MANAGEMENT FACILITY. (a) Authorizes the commission by order, if the commission has reason to believe a violation of a license issued under Chapter 402, Health and Safety Code, has occurred or that a condition at the facility licensed under that chapter presents or threatens to present a danger to the public health or safety or the environment, to summarily suspend the license and require the license holder to take action to correct the alleged violation or condition.

(b) Sets forth provisions relating to a hearing on the facts underlying the order.

(c) Requires the commission to affirmatively continue, modify, or revoke a suspension or order based on the results of the hearing.

SECTION 57. Amends Section 7.351(a), Water Code, to make conforming changes.

SECTION 58. Amends Section 7.354, Water Code, to make conforming changes.

SECTION 59. Amends Section 7.355, Water Code, to make conforming changes.

SECTION 60. Amends Section 7.357, Water Code, to make conforming changes.

SECTION 61. Repeals the following provisions of the Health and Safety Code:

- (1) Chapter 401F (Special Provisions Concerning Low-Level Radioactive Waste Disposal);
- (2) Section 401.306 (Low-Level Radioactive Waste Fund);
- (3) Section 401.413 (Commission Disposal License Required);
- (4) Sections 402.052 (Development and Operation of Disposal Site) and 402.055 (Penalty for Violation of Rule, Standard, or Order);
- (5) Chapters 402E (School and University Land), F (Licenses and Authorizations), and G (Disposal Site Construction);
- (6) Sections 402.211-402.215 (relating to operation of disposal site);
- (7) Sections 402.218-402.220 (relating to low-level radioactive waste);
- (8) Sections 402.224 (Mixed Waste), 402.225 (Belowground Disposal Restricted), and 402.226 (Shallow Land Burial Prohibited);
- (9) Section 402.228 (Decommissioning and Closing Disposal Site);
- (10) Section 402.2721 (Planning and Implementation Fees); and

(11) Section 402.275(f) (relating to low-level radioactive waste fund).

SECTION 62. (a) Effective date: September 1, 2001.

(b) Requires the Texas Natural Resource Conservation Commission to formally propose all rules necessary to effect the receipt of applications for and issuance of a license under Chapter 402, Health and Safety Code, as amended by this Act, on or before June 1, 2002.

### **SUMMARY OF COMMITTEE CHANGES**

Differs from original as follows:

- SECTION 4. Adds language in Section 402.003, Health and Safety Code, to proposed definition of “assured violation,” deletes proposed definition of “rangeland and wildlife management plan,” and adds a new definition of “federal facility waste.” Also amends proposed language in Section 402.004, Health and Safety Code.
- SECTION 5. Amends proposed Sections 402.012-402.014, 402.016-402.022, 402.025, 402.028- 402.034, and 402.037-402.039, Health and Safety Code. Adds a new Section 402.040, Health and Safety Code, and eliminates proposed Sections 402.041, 402.026, and 402.027, Health and Safety Code.
- SECTION 7. Amends proposed Section 402.058, Health and Safety Code.
- SECTION 8. Amends proposed Sections 402.060 and 402.062, Health and Safety Code. Adds a new Section 402.0605, Health and Safety Code.
- SECTION 9. Amends proposed Sections 402.081, 402.089, and 402.092, Health and Safety Code. Adds a new Section 402.086, Health and Safety Code.
- Eliminates original SECTION 10 which amended Section 402.126, Health and Safety Code.
- Adds a new SECTION 10 which adds new Sections 402.100 and 402.101 to the Health and Safety Code.
- SECTION 13. Amends proposed Section 402.095, Health and Safety Code.
- SECTION 16. Re-amends Section 402.252(a), Health and Safety Code.
- SECTION 17. Adds new language to Sections 402.271 and 402.272, Health and Safety Code.
- SECTION 18. Re-amends Sections 402.273 and 402.274, Health and Safety Code.
- SECTION 19. Amends proposed Sections 402.2744, Health and Safety Code.
- SECTION 20. Re-amends Section 402.275(d), Health and Safety Code.
- SECTION 21. Re-amends Section 402.291, Health and Safety Code.
- SECTION 32. Re-amends Section 401.104(b), Health and Safety Code.
- Eliminates original SECTION 33 which transferred Section 401.106(c), Health and

Safety Code, to Chapter 402B, Health and Safety Code, as amended by this Act, redesignates it as Section 402.041, Health and Safety Code, and amends the heading.

- Redesignates original SECTIONS 34-63 as SECTIONS 33-62.
- SECTION 34. Re-amends Section 401.109(b), Health and Safety Code.
- SECTION 36. Re-amends Section 401.112(b), Health and Safety Code.
- SECTION 37. Re-amends Section 401.113, Health and Safety Code.
- SECTION 55. Re-amends Section 7.303(b), Health and Safety Code.
- SECTION 61. Amends the list of repealers to remove Sections 402.121-402.125 and Sections 402.127-402.129, Health and Safety Code from the list of provisions to be repealed. Adds Chapter 402E, Health and Safety Code to the list of provisions to be repealed.
- SECTION 62. Adds a new Subsection (b) requiring the Texas Natural Resource Conservation Commission to formally propose all rules necessary to effect the receipt of applications for and issuance of a license under Chapter 402, Health and Safety Code, as amended by this Act, on or before June 1, 2002.