

Radioactive Waste Bill - SB 791 - the Committee Substitute Bill in the House and the Bill Analysis

2013 Bill Number: TX83RSB 791

Date: 05-16-

HOUSE COMMITTEE SUBSTITUTE

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of low-level radioactive waste  
disposal

3 facilities and radioactive substances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (d), Section 401.052, Health and  
6 Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067  
(H.B.

7 1567), Acts of the 78th Legislature, Regular Session, 2003, is  
8 reenacted and amended to read as follows:

9 (d) Fees assessed under this section:

10 (1) may not exceed \$10 per cubic foot of shipped  
11 low-level radioactive waste;

12 (2) shall be collected by the department and  
deposited

13 to the credit of the perpetual care account;

14 (3) shall be used [~~exclusively~~] by the department  
for

15 emergency planning for and response to transportation accidents  
16 involving low-level radioactive waste, including first responder  
17 training in counties through which transportation routes are  
18 designated in accordance with Subsection (a); and

19 (4) may not be collected on waste disposed of at a  
20 federal facility waste disposal facility [~~shall be suspended~~  
when  
21 ~~the amount of fees collected reaches \$500,000, except that if~~  
the  
22 ~~balance of fees collected is reduced to \$350,000 or less, the~~  
23 ~~assessments shall be reinstated to bring the balance of fees~~  
24 ~~collected to \$500,000]~~.

1

1 SECTION 2. Subsection (a), Section 401.109, Health and  
2 Safety Code, is amended to read as follows:  
3 (a) The department or commission may require a holder of  
a  
4 license issued by the agency to provide security acceptable to  
the  
5 agency to assure performance of the license holder's obligations  
6 under this chapter. The department [~~or commission~~] shall  
deposit  
7 security provided to the department under this section to the  
8 credit of the perpetual care account. The department [~~or~~  
9 ~~commission~~] by rule shall provide that any evidence of security  
10 must be made payable to the credit of the perpetual care  
account.  
11 The commission shall deposit security provided to the commission  
12 under this section to the credit of the environmental radiation  
and  
13 perpetual care account. The commission shall provide that  
security  
14 must be made payable to the credit of the environmental  
radiation  
15 and perpetual care account.

16 SECTION 3. Section 401.152, Health and Safety Code, is  
17 amended by amending Subsection (b) and adding Subsection (c) to  
18 read as follows:

19 (b) The department [~~agency~~] shall use the security  
provided  
20 by the license holder to pay the costs of actions that are taken  
or

21 that are to be taken under this section. The department  
[~~agency~~]  
22 shall send to the comptroller a copy of its order together with  
23 necessary written requests authorizing the comptroller to:

24 (1) enforce security supplied by the license  
holder;

25 (2) convert an amount of security into cash, as  
26 necessary; and

27 (3) disburse from the security in the radiation  
and

2

1 perpetual care account the amount necessary to pay the costs.

2 (c) The commission shall use the security provided by  
the  
3 license holder to pay the costs of actions taken or to be taken  
4 under this section. The commission shall send to the  
comptroller a  
5 copy of its order together with necessary written requests  
6 authorizing the comptroller to:

7 (1) enforce security supplied by the license  
holder;

8 (2) convert an amount of security to cash, as  
9 necessary; and

10 (3) disburse from the security in the  
environmental

11 radiation and perpetual care account the amount necessary to pay  
12 the costs.

13 SECTION 4. Section 401.207, Health and Safety Code, is  
14 amended by adding Subsections (d-1), (d-2), and (e-1) and  
amending

15 Subsections (e) and (h) to read as follows:

16 (d-1) Beginning September 1, 2015, the compact waste  
17 disposal facility license holder may accept nonparty compact  
18 waste  
19 for disposal at the facility only if the waste has been  
20 volume-reduced, if eligible, by at least a factor of three. The  
21 commission by rule shall establish requirements for ensuring  
22 that  
23 low-level radioactive waste has been volume-reduced in a manner  
24 consistent with this subchapter. Before establishing  
25 requirements  
26 for volume reduction of low-level radioactive waste streams, the  
27 commission must first determine that there are at least two  
28 unaffiliated companies in operation in the United States  
29 marketplace that offer low-level radioactive waste volume  
30 reduction for each stream. This subsection does not apply to  
31 Class B

3

1 or Class C resins.

2 (d-2) If volume reduction of a low-level radioactive  
3 waste  
4 stream would result in a change of waste classification to a  
5 class  
6 higher than Class C, the requirements of Subsection (d-1) do not  
7 apply.

6 (e) The compact waste disposal facility license holder  
may  
7 not enter into a contract for the disposal of nonparty low-level  
8 radioactive waste that has been designated as Class A low-level  
9 radioactive waste under 10 C.F.R. Section 61.55 and commission  
rule  
10 unless the waste is containerized. The compact waste disposal  
11 facility license holder may dispose of:

12 (1) not more than the greater of:  
13 (A) 1.167 million curies of nonparty compact  
14 waste; or  
15 (B) an amount of nonparty compact waste  
equal to  
16 30 percent of the initial licensed capacity of the facility; and

17 (2) not more than 275,000 curies of nonparty  
compact  
18 waste in any fiscal year [~~accept more than 50,000 total cubic~~  
~~feet~~  
19 ~~of nonparty compact waste annually. The compact waste disposal~~  
20 ~~facility license holder may not accept more than 120,000 curies~~  
~~of~~  
21 ~~nonparty compact waste annually, except that in the first year~~  
~~the~~  
22 ~~license holder may accept 220,000 curies].~~

23 (e-1) The legislature by general law may establish  
revised  
24 limits under Subsection (e) after considering the results of the  
25 study under Section 401.208.

26 (h) A surcharge collected under Subsection (g) shall be  
27 deposited to the credit of the environmental radiation and

1 perpetual care account [~~low level radioactive waste fund~~].

2 SECTION 5. Section 401.208, Health and Safety Code, is  
3 amended by amending Subsection (c) and adding Subsection (f) to  
4 read as follows:

5 (c) Not later than December 1, 2016 [~~2012~~], the  
commission

6 shall submit a final report of the results of the study to the  
7 standing committees of the senate and the house of  
representatives

8 with jurisdiction over the disposal of low-level radioactive  
waste.

9 (f) The commission, through the agency's internal audit,  
10 shall conduct random audits of shipments to the site to ensure  
that  
11 volumes, waste contents, and classifications are represented  
12 accurately. The commission shall report these findings to the  
13 legislature in the biennial report.

14 SECTION 6. Section 401.218, Health and Safety Code, is  
15 amended by adding Subsection (d) to read as follows:

16 (d) The commission's executive director may adjust,  
17 correct, or otherwise modify license condition 143 on completion  
of  
18 an annual performance assessment. A modification by the  
executive  
19 director to a license regarding a waste form, type, or stream  
must  
20 be based on a site-specific performance assessment and  
objectives  
21 as defined by commission rule and must be processed as a minor  
22 amendment.

23 SECTION 7. Section 401.2456, Health and Safety Code, is  
24 amended by amending Subsection (b) and adding Subsections (f)  
and

25 (g) to read as follows:

26 (b) Rates and contract terms negotiated under this  
section

27 are subject to review and approval by the commission's executive

5

1 director to ensure they meet all of the requirements of this  
section

2 and the rules of the commission.

3 (f) The commission shall adopt rules governing the  
review

4 and approval by the commission's executive director of contract  
5 terms negotiated under this section.

6 (g) A person affected by an action under this section  
may

7 seek judicial review under Subchapter I, Chapter 5, Water Code.

8 SECTION 8. Subsection (e), Section 401.249, Health and  
9 Safety Code, is amended to read as follows:

10 (e) The commission may transfer money from the low-level  
11 radioactive waste fund to the environmental radiation and  
perpetual

12 care account to make payments required by the commission under  
13 Section 401.303.

14 SECTION 9. Subsection (d), Section 401.301, Health and  
15 Safety Code, is amended to read as follows:

16 (d) The commission and department shall [~~may~~] require  
that

17 each person who holds a specific license issued by the agency  
pay to

18 the agency an additional five percent of the appropriate fee set

19 under Subsection (b). Fees collected by the department under  
this

20 subsection shall be deposited to the credit of the perpetual  
care  
21 account. Fees collected by the commission under this subsection  
22 shall be deposited to the environmental radiation and perpetual  
23 care account. The fees are not refundable. The holder of a  
specific  
24 license authorizing the extraction, processing, or concentration  
25 of uranium or thorium from ore is not required to pay the  
additional  
26 fee described by this subsection before the beginning of  
operations  
27 under the license.

6

1 SECTION 10. Subsection (g), Section 401.303, Health and  
2 Safety Code, is amended to read as follows:

3 (g) If a license holder satisfies the obligations under  
this  
4 chapter, the issuing agency shall have the comptroller promptly  
5 refund to the license holder from the perpetual care account or  
the  
6 environmental radiation and perpetual care account, as  
applicable,  
7 the excess of the amount of all payments made by the license  
holder  
8 to the issuing agency and the investment earnings of those  
payments  
9 over the amount determined to be required for the continuing  
10 maintenance and surveillance of land, buildings, and radioactive  
11 material conveyed to the state.

12 SECTION 11. Subsections (b), (c), (d), (e), (f), and  
(g),  
13 Section 401.305, Health and Safety Code, are amended to read as



14 follows:

15 (b) The department [~~and commission each~~] shall deposit  
16 to

16 the credit of the perpetual care account money and security it

17 receives [~~they receive~~] under this chapter, including an

18 administrative penalty collected by the department under  
19 Sections

19 401.384-401.390 but excluding fees collected under Sections

20 401.301(a)-(c) and 401.302. Interest earned on money in the

21 perpetual care account shall be credited to the perpetual care

22 account.

23 (c) Money and security in the perpetual care account may  
24 be

24 administered by the department [~~or commission~~] only for storage,

25 maintenance, and distribution of mammography medical records or  
26 the

26 decontamination, decommissioning, stabilization, reclamation,

27 maintenance, surveillance, control, storage, and disposal of

7

1 radioactive substances for the protection of the public health  
2 and

2 safety and the environment under this chapter and for refunds  
3 under

3 Section 401.303.

4 (d) Money and security in the perpetual care account may  
5 not

5 be used for normal operating expenses of the department [~~or~~

6 ~~commission~~].

7 (e) The department [~~or commission~~] may use money in the

8 perpetual care account to pay for measures:

9 (1) to prevent or mitigate the adverse effects of

10 abandonment of radioactive substances, default on a lawful  
11 obligation, insolvency, or other inability by the holder of a  
12 license issued by the department [~~or commission~~] to meet the  
13 requirements of this chapter or of department [~~or commission~~]  
14 rules;

15 (2) to assure the protection of the public health  
and  
16 safety and the environment from the adverse effects of ionizing  
17 radiation; and

18 (3) to protect the health and safety of  
mammography

19 patients by assuring mammography medical records are made  
available

20 to affected patients.

21 (f) The department [~~or commission~~] may provide, by the  
terms

22 of a contract or lease entered into between the department [~~or~~  
23 ~~commission~~] and any person, by the terms of a mammography  
24 certification issued by the department [~~or commission~~] to any  
25 person, or by the terms of a license issued to any person, for  
the

26 storage, maintenance, and distribution of mammography medical  
27 records. The department [~~or commission~~] may provide, by the  
terms

1 of a contract or lease entered into between the department [~~or~~  
2 ~~commission~~] and any person or by the terms of a license issued  
by  
3 the department [~~or commission~~] to any person, for the  
4 decontamination, closure, decommissioning, reclamation,

5 surveillance, or other care of a site or facility subject to  
6 department [~~or commission~~] jurisdiction under this chapter as  
7 needed to carry out the purpose of this chapter.

8 (g) The existence of the perpetual care account does not  
9 make the department [~~or commission~~] liable for the costs of  
10 storage, maintenance, and distribution of mammography medical  
11 records arising from a mammography certification holder's  
failure

12 to store, maintain, and make available mammography medical  
records

13 or for the costs of decontamination, transfer, transportation,  
14 reclamation, surveillance, or disposal of radioactive substances  
15 arising from a license holder's abandonment of radioactive  
16 substances, default on a lawful obligation, insolvency, or  
17 inability to meet the requirements of this chapter or of  
department

18 [~~or commission~~] rules.

19 SECTION 12. Subchapter H, Chapter 401, Health and Safety  
20 Code, is amended by adding Sections 401.306 and 401.307 to read  
as

21 follows:

22 Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE  
23 ACCOUNT. (a) The environmental radiation and perpetual care  
24 account is an account in the general revenue fund.

25 (b) The commission shall deposit to the credit of the  
26 environmental radiation and perpetual care account money and  
27 security it receives under this chapter, including fees  
collected

1 under Section 401.301(d).

2                   (c) Money and security in the environmental radiation  
and  
3                   perpetual care account may be administered by the commission  
only  
4                   for the decontamination, decommissioning, stabilization,  
5                   reclamation, maintenance, surveillance, control, storage, and  
6                   disposal of radioactive substances for the protection of the  
public  
7                   health and safety and the environment under this chapter and for  
8                   refunds under Section 401.303.

9                   (d) Money and security in the environmental radiation  
and  
10                  perpetual care account may not be used for normal operating  
11                  expenses of the commission.

12                  (e) The commission may use money in the environmental  
13                  radiation and perpetual care account to pay for measures:

14                         (1) to prevent or mitigate the adverse effects of  
15                         abandonment of radioactive substances, default on a lawful  
16                         obligation, insolvency, or other inability by the holder of a  
17                         license issued by the commission to meet the requirements of  
this  
18                         chapter or of commission rules; and

19                         (2) to ensure the protection of the public health  
and  
20                         safety and the environment.

21                         (f) The commission may provide, by the terms of a  
contract  
22                         or lease entered into between the commission and any person, or  
by  
23                         the terms of a license issued to any person, for the  
24                         decontamination, closure, decommissioning, reclamation,  
25                         surveillance, or other care of a site or facility subject to

26 commission jurisdiction under this chapter as needed to carry  
out  
27 the purposes of this chapter.

10

1 (g) The existence of the environmental radiation and  
2 perpetual care account does not make the commission liable for  
the  
3 costs of decontamination, transfer, transportation, reclamation,  
4 surveillance, or disposal of radioactive substances arising from  
a  
5 license holder's abandonment of radioactive substances, default  
on  
6 a lawful obligation, insolvency, or inability to meet the  
7 requirements of this chapter or of commission rules.

8 Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL  
9 RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees  
imposed  
10 under Sections 401.052(d) and 401.301(d) are suspended when the  
sum  
11 of the balances of the perpetual care account and the  
environmental  
12 radiation and perpetual care account reaches \$25 million. The  
fees  
13 are reinstated when the sum of the balances of the perpetual  
care  
14 account and the environmental radiation and perpetual care  
account  
15 falls to \$12.5 million or less.

16 (b) The surcharge collected under Section 401.207(g) is  
17 collected without regard to the balances of the perpetual care  
18 account and the environmental radiation and perpetual care  
account.

19 (c) Notwithstanding Subsection (a), a fee imposed by the

20 commission under Section 401.301(d) on the holder of a license  
21 authorizing the extraction, processing, or concentration of  
22 uranium or thorium from ore is suspended when the amount in the  
23 environmental radiation and perpetual care account attributable  
24 to those fees reaches \$2 million. If the amount in that account  
25 attributable to those fees is reduced to \$1.5 million or less,  
26 the fee is reinstated until the amount reaches \$2 million.

27 (d) Notwithstanding Subsection (a), a fee imposed under

11

1 Section 401.052(d) is suspended from imposition against a party  
2 state compact waste generator when the amount in the perpetual  
3 care account attributable to those fees reaches \$500,000. If the  
4 amount in that account attributable to those fees is reduced to  
5 \$350,000 or less, the fee is reinstated until the amount reaches \$500,000.

6 (e) This section does not affect the liability of a  
7 generator for a transportation accident.

8 SECTION 13. The following sections of the Health and  
9 Safety

9 Code are repealed:

- 10 (1) Subsection (h), Section 401.245;
- 11 (2) Subsection (b), Section 401.2455;
- 12 (3) Subsection (e), Section 401.301; and
- 13 (4) Section 403.0052.

14 SECTION 14. (a) As soon as practicable after the  
effective

15 date of this Act, the Texas Commission on Environmental Quality  
16 shall adopt rules to implement Subsection (d-1), Section  
401.207,  
17 and Subsection (d), Section 401.218, Health and Safety Code, as  
18 added by this Act.

19 (b) As soon as practicable after the effective date of  
this  
20 Act but not later than the first anniversary of the effective  
date  
21 of this Act, the Texas Commission on Environmental Quality shall  
22 adopt rules to implement Subsection (b), Section 401.2456,  
Health  
23 and Safety Code, as amended by this Act, and Subsection (f),  
Section  
24 401.2456, Health and Safety Code, as added by this Act.

25 (c) As soon as practicable after the effective date of  
this  
26 Act but not later than January 1, 2014, the Texas Commission on  
27 Environmental Quality and the Department of State Health  
Services

12

1 shall update the portion of the memorandum of understanding  
between  
2 the two agencies under Section 401.069, Health and Safety Code,  
3 that governs each agency's role regarding the regulation and  
4 oversight of radioactive materials and sources of radiation.

5 SECTION 15. The changes in law made by this Act apply  
only  
6 to a contract for the disposal of compact waste or nonparty  
compact  
7 waste that is signed on or after the effective date of this  
Act. A

8 contract signed before the effective date of this Act is  
governed by

9 the law in effect on the date the contract was signed, and the  
10 former law is continued in effect for that purpose.

11 SECTION 16. This Act takes effect September 1, 2013.

**BILL ANALYSIS**



## **BACKGROUND AND PURPOSE**

Interested parties have raised concerns regarding a number of issues relating to the regulation of low-level radioactive waste, including the disposal of waste at the facility in Andrews County. The parties contend that certain regulation needs to be revised following TCEQ's study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste. C.S.S.B. 791 seeks to address these issues by amending the law relating to the regulation of low-level radioactive waste disposal facilities and radioactive substances.

## **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 4, 7, and 14 of this bill.

## **ANALYSIS**

C.S.S.B. 791 amends the Health and Safety Code to establish the environmental radiation and perpetual care account as an account in the general revenue fund and to require the Texas Commission on Environmental Quality (TCEQ) to deposit to the credit of the account money and security it receives under the Texas Radiation Control Act. The bill sets out provisions relating to the administration and use of the account, TCEQ liability, and caps for the perpetual care account and the environmental radiation and perpetual care account. The bill authorizes TCEQ to provide, by the terms of a contract or lease entered into between TCEQ and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to TCEQ jurisdiction under the Texas Radiation Control Act as needed to carry out the act's purposes.

C.S.S.B. 791 requires TCEQ to deposit security provided by the holder of a license issued under the Texas Radiation Control Act to the credit of the environmental radiation and perpetual care account, rather than to the credit of the perpetual care account, and to provide that security must be made payable to the credit of the environmental radiation and perpetual care account. The bill specifies that a Department of State Health Services (DSHS) written request to the comptroller relating to a certain order relating to corrective actions and measures is required to authorize the comptroller of public accounts, among other things, to disburse from the security in the radiation and perpetual care account, rather than the perpetual care account, the amount necessary to pay the costs. The bill requires TCEQ to use the security provided by the license holder to pay the costs of actions taken or to be taken pursuant to such an order and requires TCEQ to send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to enforce security supplied by the licensed holder; to convert an amount of security to cash, as necessary; and to disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

C.S.S.B. 791 authorizes the compact waste disposal facility license holder, beginning September

1, 2015, to accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three. The bill requires TCEQ by rule, as soon as practicable after the bill's effective date, to establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with special provisions of the Texas Radiation Control Act concerning low-level radioactive waste disposal. The bill requires TCEQ, before establishing requirements for volume reduction of low-level radioactive waste streams, to determine first that there are at least two unaffiliated companies in operation in the U.S. marketplace that offer low-level radioactive waste volume reduction for each stream. The bill specifies that these requirements do not apply to Class B or Class C resins nor do they apply if a volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C. The bill prohibits the compact waste disposal facility license holder from entering into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under certain federal law and TCEQ rule unless the waste is containerized. The bill revises the limitations on the amount of nonparty compact waste for which the compact waste disposal facility license holder is authorized to dispose. The bill requires the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the compact waste disposal facility to be deposited to the credit of the environmental radiation and perpetual care account, rather than to the credit of the low-level radioactive waste fund.

C.S.S.B. 791 extends the deadline by which TCEQ is required to submit the final report of the results of its study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste from December 1, 2012, to December 1, 2016. The bill requires TCEQ, through the agency's internal audit, to conduct random audits of shipments of the site to ensure that volumes, waste contents, and classifications are represented accurately and requires TCEQ to report those findings to the legislature in the biennial report.

C.S.S.B. 791 authorizes the executive director of TCEQ to adjust, correct, or otherwise modify compact waste disposal facility license condition 143 on completion of an annual performance assessment. The bill requires a modification by the executive director to a license regarding a waste form, type, or stream to be based on a site-specific performance assessment and objectives as defined by TCEQ rule and to be processed as a minor amendment. The bill requires TCEQ, as soon as practicable after the bill's effective date, to adopt rules to implement these provisions.

C.S.S.B. 791 subjects rates and contract terms negotiated pursuant to contracts for nonparty compact waste disposal to TCEQ rules, in addition to review and approval by the executive director of TCEQ to ensure they meet all of the applicable requirements. The bill requires TCEQ, as soon as practicable after the bill's effective date but not later than the first anniversary of that date, to adopt rules governing the review and approval by the executive director of such contract terms. The bill authorizes a person affected by an action under statutory provisions regarding such contracts to seek judicial review as set out in Water Code provisions governing TCEQ judicial review.

C.S.S.B. 791 authorizes TCEQ to transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account, rather than to the perpetual care account,

to make payments required by TCEQ for maintenance, surveillance, or other care related to an activity licensed under the Texas Radiation Control Act. The bill requires TCEQ and DSHS to require, rather than authorizes TCEQ and DSHS to require, each person who holds a specific license issued by the agency to pay to the agency an additional five percent of the appropriate license or registration fee. The bill requires fees collected by TCEQ to be deposited to the environmental radiation and perpetual care account, rather than to the credit of the perpetual care account. The bill expressly does not require the holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore to pay the additional fee before the beginning of operations under the license. The bill removes language requiring TCEQ to deposit money and security it receives to the credit of the perpetual care account and applies provisions governing that account only to DSHS.

C.S.S.B. 791 amends Section 401.052(d), Health and Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003, to specify uses to which fees for the transportation and routing of radioactive material and waste in Texas are required to be applied by DSHS for emergency planning for and response to transportation accidents involving low-level radioactive waste include first responder training in counties through which transportation routes for such material and waste are designated. The bill prohibits collection of such fees on waste disposed of at a federal facility waste disposal facility and removes language providing for the suspension and reinstatement of fee collection upon reaching certain thresholds.

C.S.S.B. 791 requires TCEQ and DSHS, as soon as practicable after the bill's effective date but not later than January 1, 2014, to update the portion of the memorandum of understanding between the two agencies that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

C.S.S.B. 791 repeals the following provisions of the Health and Safety Code:

- A provision relating to the issuance of a proposal regarding a contested case involving the adoption of party state compact waste disposal fees
- A provision relating to a prohibition against an extension of the period during which interim rates apply and to a requirement that all disposal at the compact waste disposal facility cease until the rates are adopted
- A provision relating to the suspension and reinstatement upon reaching certain thresholds of the assessment of an additional licensing fee for certain license holders

Provisions relating to TCEQ's biennial report to the legislature regarding the Texas Low-Level Radioactive Waste Disposal Compact

C.S.S.B. 791 repeals Sections 401.245(h), 401.2455(b), 401.301(e), and 403.0052, Health and Safety Code.

#### **EFFECTIVE DATE**

September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 791 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (d), Section 401.052, Health and Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended.

SECTION 2. Subsection (a), Section 401.109, Health and Safety Code, is amended.

SECTION 3. Section 401.152, Health and Safety Code, is amended.

SECTION 4. Section 401.207, Health and Safety Code, is amended by adding Subsection (d-1) and amending Subsections (e) and (h) to read as follows:

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three. The commission by rule shall establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with this subchapter. Before establishing requirements for volume reduction of low-level radioactive waste streams, the commission must first determine that there are at least two unaffiliated companies in operation in the United States marketplace that offer low-level radioactive waste volume reduction for each stream. In this subsection, "unaffiliated" means not associated with one another as a subordinate, subsidiary, or member.

(e) The compact waste disposal facility license

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Section 401.207, Health and Safety Code, is amended by adding Subsections (d-1), (d-2), and (e-1) and amending Subsections (e) and (h) to read as follows:

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three. The commission by rule shall establish requirements for ensuring that low-level radioactive waste has been volume-reduced in a manner consistent with this subchapter. Before establishing requirements for volume reduction of low-level radioactive waste streams, the commission must first determine that there are at least two unaffiliated companies in operation in the United States marketplace that offer low-level radioactive waste volume reduction for each stream. This subsection does not apply to Class B or Class C resins.

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the requirements of Subsection (d-1) do not apply.

(e) The compact waste disposal facility license

holder may not enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule [accept more than 50,000 total cubic feet of nonparty compact waste annually]. In the state fiscal year beginning September 1, 2013, the [The] compact waste disposal facility license holder may not accept more than 300,000 [120,000] curies of nonparty compact waste. In the state fiscal years beginning September 1, 2014, and September 1, 2015, [annually, except that in the first year] the license holder may not accept more than 220,000 curies of nonparty compact waste annually. In the state fiscal year beginning September 1, 2016, the compact waste disposal facility license holder may not accept more than 120,000 curies of nonparty compact waste.

The legislature by general law may establish revised limits after considering the results of the study under Section 401.208.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account [low-level radioactive waste fund].

SECTION 5. Subchapter F, Chapter 401, Health and Safety Code, is amended.

SECTION 6. Section 401.208, Health and Safety Code, is amended.

SECTION 7. Section 401.218, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The commission's executive director may adjust, correct, or otherwise modify license condition 150 on completion of an annual performance assessment. A modification by the executive director to a license regarding a waste form, type, or stream must be based on a site-specific performance assessment and objectives as defined by commission rule and must be processed as a minor amendment.

holder may not enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may dispose of: (1) not more than the greater of: (A) 1.167 million curies of nonparty compact waste; or (B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and (2) not more than 275,000 curies of nonparty compact waste in any fiscal year [accept more than 50,000 total cubic feet of nonparty compact waste annually]. The compact waste disposal facility license holder may not accept more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies].

(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account [low-level radioactive waste fund].

No equivalent provision.

SECTION 5. Same as engrossed version.

SECTION 6. Section 401.218, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The commission's executive director may adjust, correct, or otherwise modify license condition 143 on completion of an annual performance assessment. A modification by the executive director to a license regarding a waste form, type, or stream must be based on a site-specific performance assessment and objectives as defined by commission rule and must be processed as a minor amendment.

SECTION 8. Section 401.2456, Health and Safety Code, is amended.

SECTION 9. Subsection (e), Section 401.249, Health and Safety Code, is amended.

SECTION 10. Subsection (d), Section 401.301, Health and Safety Code, is amended to read as follows:

(d) The commission and department ~~shall~~<sup>may</sup> require that each person who holds a specific license issued by the agency pay to the agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable.

SECTION 11. Subsection (g), Section 401.303, Health and Safety Code, is amended.

SECTION 12. Subsections (b), (c), (d), (e), (f), and (g), Section 401.305, Health and Safety Code, are amended.

SECTION 13. Subchapter H, Chapter 401, Health and Safety Code, is amended by adding Sections 401.306 and 401.307 to read as follows:

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Subsection (d), Section 401.301, Health and Safety Code, is amended to read as follows:

(d) The commission and department ~~shall~~<sup>may</sup> require that each person who holds a specific license issued by the agency pay to the agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

SECTION 10. Same as engrossed version.

SECTION 11. Same as engrossed version.

SECTION 12. Subchapter H, Chapter 401, Health and Safety Code, is amended by adding Sections 401.306 and 401.307 to read as follows:

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d).

perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAP.

(a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches \$150 million. The fees are reinstated when

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS.

(a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches \$25 million. The fees are reinstated when

the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to \$75 million or less.

(b) The surcharge collected under Section 401.207(h) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches \$2 million. If the amount in that account attributable to those fees is reduced to \$1.5 million or less, the fee is reinstated until the amount reaches \$2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account attributable to those fees reaches \$500,000. If the amount in that account attributable to those fees is reduced to \$350,000 or less, the fee is reinstated until the amount reaches \$500,000. The costs of all clean-up associated with a transportation accident will be borne by the generator of the product proportional to its share of the load.

SECTION 14. The following sections of the Health and Safety Code are repealed:

- (1) Subsection (h), Section 401.245;
- (2) Subsection (b), Section 401.2455;
- (3) Subsection (e), Section 401.301; and
- (4) Section 403.0052.

SECTION 15. (a) As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Subsection (d-1), Section 401.207, and Subsection (d), Section 401.218, Health and Safety Code, as added by this Act.

(b) As soon as practicable after the effective date of this Act but not later than the first anniversary of the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules to implement Subsection (b), Section 401.2456, Health

the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to \$12.5 million or less.

(b) The surcharge collected under Section 401.207(g) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches \$2 million. If the amount in that account attributable to those fees is reduced to \$1.5 million or less, the fee is reinstated until the amount reaches \$2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account attributable to those fees reaches \$500,000. If the amount in that account attributable to those fees is reduced to \$350,000 or less, the fee is reinstated until the amount reaches \$500,000.

(e) This section does not affect the liability of a generator for a transportation accident.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.



and Safety Code, as amended by this Act, and Subsection (f), Section 401.2456, Health and Safety Code, as added by this Act.

(c) As soon as practicable after the effective date of this Act but not later than January 1, 2014, the Texas Commission on Environmental Quality and the Department of State Health Services shall update the portion of the memorandum of understanding between the two agencies under Section 401.069, Health and Safety Code, that governs each agency's role regarding the regulation and oversight of radioactive materials and sources of radiation.

SECTION 16. The changes in law made by this Act apply only to a contract for the disposal of compact waste or nonparty compact waste that is signed on or after the effective date of this Act. A contract signed before the effective date of this Act is governed by the law in effect on the date the contract was signed, and the former law is continued in effect for that purpose.

SECTION 17. This Act takes effect September 1, 2013.

SECTION 15. Same as engrossed version.

SECTION 16. Same as engrossed version.