

AN ACT

1
2 relating to responsibilities of certain state agencies concerning
3 radioactive substances; imposing fees and surcharges; providing
4 administrative and civil penalties.

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

6 SECTION 1. Section 401.003, Health and Safety Code, is
7 amended by amending Subdivisions (2), (4), (5), and (6) and by
8 adding Subdivision (12-a) to read as follows:

9 (2) "Board" means the executive commissioner of the
10 Health and Human Services Commission [~~Texas Board of Health~~].

11 (4) "Commission" means the Texas [~~Natural Resource~~
12 ~~Conservation~~] Commission on Environmental Quality.

13 (5) "Commissioner" means the commissioner of state
14 [~~public~~] health services.

15 (6) "Department" means the [~~Texas~~] Department of State
16 Health Services or other department designated by the executive
17 commissioner of the Health and Human Services Commission.

18 (12-a) "Gross receipts" includes, with respect to an
19 entity or affiliated members, owners, shareholders, or limited or
20 general partners, all receipts from the entity's disposal
21 operations in Texas licensed under this chapter including any
22 bonus, commission, or similar payment received by the entity from a
23 customer, contractor, subcontractor, or other person doing
24 business with the entity or affiliated members, owners,

1 shareholders, or limited or general partners. This term does not
2 include receipts from the entity's operations in Texas, or
3 affiliated members, owners, shareholders, or limited or general
4 partners, for capital reimbursements, bona fide storage and
5 processing, and federal or state taxes or fees on waste received
6 uniquely required to meet the specifications of a license or
7 contract. The commission may promulgate rules in establishing the
8 criteria for determining gross receipts consistent with the
9 parameters of this definition.

10 SECTION 2. Subsections (a) and (b), Section 401.011, Health
11 and Safety Code, are amended to read as follows:

12 (a) The department is the Texas Radiation Control Agency.
13 The department has jurisdiction over activities and substances
14 regulated under this chapter except as provided by Subsection (b)
15 and Subchapters E, F, G, and K.

16 (b) The commission has jurisdiction to regulate and
17 license:

18 (1) the disposal of radioactive substances;

19 (2) the processing or storage of low-level radioactive
20 waste or naturally occurring radioactive material waste received
21 from other persons, except oil and gas NORM;

22 (3) the recovery or processing of source material in
23 accordance with Subchapter G;

24 (4) the processing of by-product material as defined
25 by Section 401.003(3)(B); and

26 (5) sites for the disposal of:

27 (A) low-level radioactive waste;

1 (B) by-product material; or

2 (C) naturally occurring radioactive material
3 waste [~~except by-product material defined by Section~~
4 ~~401.003(3)(B)]].~~

5 SECTION 3. Section 401.104, Health and Safety Code, is
6 amended by amending Subsection (b) and adding Subsection (f) to
7 read as follows:

8 (b) Except as provided by Subsection (e), the commission by
9 rule shall provide for licensing for the disposal of radioactive
10 substances [~~material except for the disposal of by-product material~~
11 ~~defined by Section 401.003(3)(B)]. ~~The department by rule shall~~
12 ~~provide for licensing the disposal of by-product material defined~~
13 ~~by Section 401.003(3)(B)].~~~~

14 (f) A separate commercial storage and processing license
15 may be issued for a site also licensed for disposal under this
16 chapter.

17 SECTION 4. Subsection (a), Section 401.106, Health and
18 Safety Code, is amended to read as follows:

19 (a) The board or commission by rule may exempt a source of
20 radiation or a kind of use or user from the licensing or
21 registration requirements provided by this chapter and under the
22 agency's jurisdiction if the board or commission finds that the
23 exemption of that source of radiation or kind of use or user will
24 not constitute a significant risk to the public health and safety
25 and the environment.

26 SECTION 5. Section 401.108, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a
 2 license is issued or renewed by the commission, the applicant shall
 3 demonstrate to the commission that the applicant is financially
 4 qualified to conduct the licensed activity, including any required
 5 decontamination, decommissioning, reclamation, and disposal, by
 6 posting security acceptable to the commission. [~~The board by rule~~
 7 ~~shall require an applicant to demonstrate to the department that~~
 8 ~~the applicant is financially qualified to conduct the licensed~~
 9 ~~activity, including any required decontamination, decommissioning,~~
 10 ~~reclamation, and disposal, before the department issues or renews a~~
 11 ~~license.~~]

12 (b) A license holder shall submit to the department or
 13 commission, as appropriate, at intervals required by board or
 14 commission rules or the license, proof that the license holder has
 15 updated, as appropriate, the security posted under Subsection (a)
 16 [~~of the license holder's financial qualifications~~].

17 (c) The [~~department or~~] commission at regular intervals not
 18 to exceed five years shall reevaluate [~~every five years~~] the
 19 qualifications and security provided by a license holder under
 20 Subchapter F or Subchapter G. The reevaluation may coincide with
 21 license renewal procedures if renewal and reevaluation occur in the
 22 same year.

23 SECTION 6. Subsection (b), Section 401.109, Health and
 24 Safety Code, is amended to read as follows:

25 (b) The [~~department or~~] commission shall require a holder of
 26 a license that authorizes the disposal of radioactive substances
 27 [~~low-level radioactive waste as provided by Subchapter F~~] to

1 provide security acceptable to the commission [~~agency~~] to assure
2 performance of the license holder's obligations under this chapter.

3 SECTION 7. Section 401.111, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

6 (a) The [~~board and~~] commission [~~each~~], in adopting rules for the
7 issuance of licenses under the commission's jurisdiction [~~their~~
8 ~~respective jurisdictions~~] for new sites for processing or disposal
9 of radioactive substances [~~low-level radioactive waste~~] from other
10 persons, shall adopt criteria for the designation of unsuitable
11 sites, including:

- 12 (1) flood hazard areas;
- 13 (2) areas with characteristics of discharge from or
14 recharge of a groundwater aquifer system; or
- 15 (3) areas in which soil conditions make spill cleanup
16 impracticable.

17 (b) The [~~board and~~] commission [~~each~~] shall consult with the
18 Texas Water Development Board, the State Soil and Water
19 Conservation Board, the Bureau of Economic Geology, and other
20 appropriate state agencies in developing proposed rules. The
21 [~~board and~~] commission [~~each~~] by rule shall:

- 22 (1) require selection of sites in areas in which
23 natural conditions minimize potential contamination of surface
24 water and groundwater; and
- 25 (2) prohibit issuance of licenses for unsuitable sites
26 as defined by the rules.

27 SECTION 8. Section 401.112, Health and Safety Code, is

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1 amended to read as follows:

2 Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR
3 DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The
4 [~~department or~~] commission[~~, within its jurisdiction~~], in making a
5 licensing decision on a specific license application to process or
6 dispose of low-level radioactive waste from other persons, shall
7 consider:

8 (1) site suitability, geological, hydrological, and
9 meteorological factors, and natural [~~naturals~~] hazards;

10 (2) compatibility with present uses of land near the
11 site;

12 (3) socioeconomic effects on surrounding communities
13 of operation of the licensed activity and of associated
14 transportation of low-level radioactive waste;

15 (4) the need for and alternatives to the proposed
16 activity, including an alternative siting analysis prepared by the
17 applicant;

18 (5) the applicant's qualifications, including:

19 (A) financial and technical qualifications and
20 compliance history under the method for evaluation of compliance
21 history developed by the commission under Section 5.754, Water
22 Code, for an application to the commission; and

23 (B) the demonstration of financial
24 qualifications under Section 401.108 [~~or the requirements of~~
25 ~~Section 401.110(b) for an application to the department~~];

26 (6) background monitoring plans for the proposed site;

27 (7) suitability of facilities associated with the

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1 proposed activities;

2 (8) chemical, radiological, and biological
3 characteristics of the low-level radioactive waste and waste
4 classification under Section 401.053;

5 (9) adequate insurance of the applicant to cover
6 potential injury to any property or person, including potential
7 injury from risks relating to transportation;

8 (10) training programs for the applicant's employees;

9 (11) a monitoring, record-keeping, and reporting
10 program;

11 (12) spill detection and cleanup plans for the
12 licensed site and related to associated transportation of low-level
13 radioactive waste;

14 (13) decommissioning and postclosure care plans;

15 (14) security plans;

16 (15) worker monitoring and protection plans;

17 (16) emergency plans; and

18 (17) a monitoring program for applicants that includes
19 prelicense and postlicense monitoring of background radioactive
20 and chemical characteristics of the soils, groundwater, and
21 vegetation.

22 (b) An applicant for the specific license must submit with
23 the application information necessary for the commission [~~issuing~~
24 ~~agency~~] to consider the factors under Subsection (a).

25 (c) The [~~board and~~] commission [~~each within its~~
26 ~~jurisdiction~~] by rule shall provide specific criteria for the
27 different types of licensed low-level radioactive waste activities

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1 for the listed factors and may include additional factors and
2 criteria that the [~~board or~~] commission[~~, as appropriate,~~]
3 determines necessary for full consideration of a license.

4 SECTION 9. Subsections (a) and (b), Section 401.113, Health
5 and Safety Code, are amended to read as follows:

6 (a) Before a hearing under Section 401.114 begins, the
7 commission [~~agency holding the hearing~~] shall prepare or have
8 prepared a written analysis of the effect on the environment of a
9 proposed licensed activity that the commission [~~agency~~] determines
10 has a significant effect on the human environment.

11 (b) The commission [~~agency~~] shall make the analysis
12 available to the public not later than the 31st day before the date
13 of a hearing under Section 401.114.

14 SECTION 10. Section 401.114, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 401.114. NOTICE AND HEARING. (a) Before the
17 [~~department or~~] commission[~~, within its jurisdiction,~~] grants or
18 renews a license to process or dispose of low-level radioactive
19 waste from other persons, the commission [~~agency~~] shall give notice
20 and shall provide an opportunity for a public hearing in the manner
21 provided by the commission's [~~agency's~~] formal hearing procedure
22 and Chapter 2001, Government Code.

23 (b) In addition to other notice, the commission [~~agency~~]
24 shall publish notice of the hearing in the manner provided by
25 Chapter 313, Government Code, in the county in which the proposed
26 facility is to be located. The notice shall state the subject and
27 the time, place, and date of the hearing.

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1 (c) The commission [~~agency~~] shall mail, by certified mail in
2 the manner provided by the commission's [~~agency's~~] rules, written
3 notice to each person who owns property adjacent to the proposed
4 site. The notice must be mailed not later than the 31st day before
5 the date of the hearing and must include the same information that
6 is in the published notice. If true, the commission [~~agency~~] or the
7 applicant must certify that the notice was mailed as required by
8 this subsection, and at the hearing the certificate is conclusive
9 evidence of the mailing.

10 SECTION 11. Section 401.117, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 401.117. CONSTRUCTION LIMITATION. The [~~department or~~]
13 commission shall prohibit major construction relating to
14 activities to be permitted under a license issued by the commission
15 [~~agency~~] to process or dispose of low-level radioactive waste from
16 other persons until the requirements in Sections 401.113 and
17 401.114 are completed.

18 SECTION 12. Subsection (a), Section 401.202, Health and
19 Safety Code, is amended to read as follows:

20 (a) The commission [~~or department, within its respective~~
21 ~~jurisdiction,~~] may grant, deny, renew, revoke, suspend, or withdraw
22 licenses for the disposal of low-level radioactive waste from other
23 persons and for the processing of that waste.

24 SECTION 13. Section 401.262, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL.
27 The commission [~~department~~] has sole and exclusive authority to

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1 assure that processing and disposal sites are closed and that
2 by-product material is managed and disposed of in compliance with:

- 3 (1) the federal commission's applicable standards; and
- 4 (2) closure criteria the federal commission and the
5 United States Environmental Protection Agency have determined are
6 protective of human health and safety and the environment.

7 SECTION 14. Section 401.2625, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 401.2625. LICENSING AUTHORITY. The commission
10 [~~commissioner~~] has sole and exclusive authority to grant, deny,
11 renew, revoke, suspend, amend, or withdraw licenses for source
12 material recovery and processing or for storage, processing, or
13 disposal of by-product material.

14 SECTION 15. Subsections (a) and (c) through (f), Section
15 401.263, Health and Safety Code, are amended to read as follows:

16 (a) If the commission [~~department~~] is considering the
17 issuance, renewal, or amendment of a license to process materials
18 that produce by-product materials or a license to dispose of
19 by-product material and the commission [~~department~~] determines
20 that the licensed activity will have a significant impact on the
21 human environment, the commission [~~department~~] shall prepare or
22 have prepared a written environmental analysis.

23 (c) The commission [~~department~~] shall give notice of the
24 analysis as provided by commission [~~board~~] rule and shall make the
25 analysis available to the public for written comment not later than
26 the 31st day before the date of the hearing on the license.

27 (d) After notice is given, the commission [~~department~~]

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1 shall provide an opportunity for written comments by persons
2 affected.

3 (e) The analysis shall be included as part of the record of
4 the commission's [~~department's~~] proceedings.

5 (f) The commission [~~board~~] by rule shall prohibit major
6 construction with respect to an activity that is to be licensed
7 until the requirements of Subsections (a), (b), (c), and (e) are
8 completed.

9 SECTION 16. Subsections (a), (c), and (d), Section 401.264,
10 Health and Safety Code, are amended to read as follows:

11 (a) The commission [~~department~~] on its own motion may or on
12 the written request of a person affected shall provide an
13 opportunity for a public hearing on an application over which the
14 commission [~~department~~] has jurisdiction to determine whether to
15 issue, renew, or amend a license to process materials that produce
16 by-product materials or a license to dispose of by-product
17 materials in the manner provided by Chapter 2001, Government Code,
18 and permit appearances with or without counsel and the examination
19 and cross-examination of witnesses under oath.

20 (c) The commission [~~department~~] shall make a record of the
21 proceedings and provide a transcript of the hearing on request of,
22 and payment for, the transcript or provision of a sufficient
23 deposit to assure payment by any person requesting the transcript.

24 (d) The commission [~~department~~] shall provide an
25 opportunity to obtain a written determination of action to be
26 taken. The determination must be based on evidence presented to the
27 commission [~~department~~] and include findings. The written

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1 determination is available to the public.

2 SECTION 17. Section 401.265, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL
5 LICENSES. The commission [~~department~~] shall prescribe conditions
6 in a radioactive substances [~~material~~] license issued, renewed, or
7 amended for an activity that results in production of by-product
8 material to minimize or, if possible, eliminate the need for
9 long-term maintenance and monitoring before the termination of the
10 license, including conditions that:

11 (1) the license holder will comply with the applicable
12 decontamination, decommissioning, reclamation, and disposal
13 standards that are prescribed by the commission [~~board~~] and that
14 are compatible with the federal commission's standards for sites at
15 which those ores were processed and at which the by-product
16 material is deposited; and

17 (2) the ownership of a disposal site, other than a
18 disposal well covered by a permit issued under Chapter 27, Water
19 Code, and the by-product material resulting from the licensed
20 activity are transferred, subject to Sections 401.266-401.269, to:

21 (A) the state; or

22 (B) the federal government if the state declines
23 to acquire the site, the by-product material, or both the site and
24 the by-product material.

25 SECTION 18. Subsection (a), Section 401.266, Health and
26 Safety Code, is amended to read as follows:

27 (a) The commission [~~board~~] by rule or [~~order or the~~

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1 ~~department by~~] order may require that before a license covering
2 land used for the disposal of by-product material is terminated,
3 the land, including any affected interests in the land, must be
4 transferred to the federal government or to the state unless:

5 (1) the federal commission determines before the
6 license terminates that the transfer of title to the land and the
7 by-product material is unnecessary to protect the public health,
8 safety, or welfare or to minimize danger to life or property; or

9 (2) the land is held in trust by the federal government
10 for an Indian tribe, is owned by an Indian tribe subject to a
11 restriction against alienation imposed by the federal government,
12 is owned by the federal government, or is owned by the state.

13 SECTION 19. Section 401.267, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT
16 MATERIALS AND SITES. (a) The commission [~~department~~] may acquire
17 by-product material and fee simple title in land, affected mineral
18 rights, and buildings at which that by-product material is disposed
19 of and abandoned so that the by-product material and property can be
20 managed in a manner consistent with protecting public health,
21 safety, and the environment.

22 (b) The commission [~~department~~] may sell land acquired
23 under this section at the land's fair market value after the
24 commission [~~department~~] has taken corrective action to restore the
25 land to a condition that does not compromise the public health or
26 safety or the environment. The General Land Office shall negotiate
27 and close a transaction under this subsection on behalf of the

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1 commission [~~department~~] using procedures under Section 31.158(c),
2 Natural Resources Code. Proceeds from the transaction shall be
3 deposited in the Texas capital trust fund.

4 SECTION 20. Section 401.269, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY
7 MEASURES. (a) The commission [~~department~~] may undertake
8 monitoring, maintenance, and emergency measures in connection with
9 by-product material and property for which it has assumed custody
10 under Section 401.267 that are necessary to protect the public
11 health and safety and the environment.

12 (b) The commission [~~department~~] shall maintain the
13 by-product material and property transferred to it in a manner that
14 will protect the public health and safety and the environment.

15 SECTION 21. Subsections (a), (b), (e), and (f), Section
16 401.270, Health and Safety Code, are amended to read as follows:

17 (a) If the commission [~~department~~] finds that by-product
18 material or the operation by which that by-product material is
19 derived threatens the public health and safety or the environment,
20 the commission [~~department~~] by order may require any action,
21 including a corrective measure, that is necessary to correct or
22 remove the threat.

23 (b) The commission [~~department~~] may issue an emergency
24 order to a person responsible for an activity, including a past
25 activity, concerning the recovery or processing of source material
26 or the disposal of by-product material if it appears that there is
27 an actual or threatened release of source material or by-product

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1 material that presents an imminent and substantial danger to the
2 public health and safety or the environment, regardless of whether
3 the activity was lawful at the time. The emergency order may be
4 issued without notice or hearing.

5 (e) The commission [~~department~~] shall use the security
6 provided by the license holder to pay the costs of actions that are
7 taken or that are to be taken under this section. The commission
8 [~~department~~] shall send to the comptroller a copy of its order
9 together with necessary written requests authorizing the
10 comptroller to:

- 11 (1) enforce security supplied by the licensee;
- 12 (2) convert an amount of security into cash, as
13 necessary; and
- 14 (3) disburse from the security in the perpetual care
15 account the amount necessary to pay the costs.

16 (f) If an order issued by the commission [~~department~~] under
17 this section is adopted without notice or hearing, the order shall
18 set a time, at least 10 but not more than 30 days following the date
19 of issuance of the emergency order, and a place for a hearing to be
20 held in accordance with the rules of the commission [~~board~~]. As a
21 result of this hearing, the commission [~~department~~] shall decide
22 whether to affirm, modify, or set aside the emergency order. All
23 provisions of the emergency order shall remain in force and effect
24 during the pendency of the hearing, unless otherwise altered by the
25 commission [~~department~~].

26 SECTION 22. Subchapter G, Chapter 401, Health and Safety
27 Code, is amended by adding Sections 401.271 and 401.272 to read as

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1 follows:

2 Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A
3 holder of a license issued by the commission under this chapter that
4 authorizes the disposal of a radioactive substance from other
5 persons shall remit each quarter an amount equal to 10 percent of
6 the license holder's gross receipts received from disposal
7 operations under a license issued under this chapter that occur
8 after the effective date of the Act enacting this section as
9 follows:

10 (1) five percent shall be remitted to the comptroller
11 for deposit to the credit of the general revenue fund; and

12 (2) five percent shall be remitted to the host county
13 in accordance with Sections 401.244(b) and (d).

14 (b) Subsection (a) does not apply to compact waste or
15 federal facility waste as defined by Section 401.2005 or industrial
16 solid waste as defined by Section 361.003.

17 Sec. 401.272. AUDIT AUTHORITY. The commission may audit a
18 license holder's financial records and waste manifest information
19 to ensure that the fees imposed under this chapter are accurately
20 paid. The license holder shall comply with the commission's
21 audit-related requests for information.

22 SECTION 23. Section 401.301, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 401.301. LICENSE AND REGISTRATION FEES [~~COLLECTED BY~~
25 ~~DEPARTMENT~~]. (a) The commission and department may collect a fee
26 for each license and registration the agency [~~it~~] issues.

27 (b) The commission and the board each by rule shall set the

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1 fee in an amount that may not exceed the actual expenses annually
2 incurred to:

3 (1) process applications for licenses or
4 registrations;

5 (2) amend or renew licenses or registrations;

6 (3) make inspections of license holders and
7 registrants; and

8 (4) enforce this chapter and rules, orders, licenses,
9 and registrations under this chapter.

10 (c) The commission and department may collect a fee, in
11 addition to the annual license and registration fee, of not less
12 than 20 percent of the amount of the annual license and registration
13 fee nor more than \$10,000 per annum from each licensee or registrant
14 who fails to pay the fees authorized by this section.

15 (d) The commission and department may require that each
16 person who holds a specific license issued by the agency
17 [~~department~~] annually pay to the agency [~~department~~] an additional
18 five percent of the appropriate annual fee set under Subsection
19 (b). Fees collected under this subsection shall be deposited to the
20 credit of the perpetual care account. The fees are not refundable.

21 (e) The commission and department shall suspend assessment
22 of a fee imposed under Subsection (d) if the amount of fees
23 collected under that subsection reaches \$500,000. If the balance
24 of fees collected subsequently is reduced to \$350,000 or less, the
25 commission and department shall reinstitute assessment of the fee
26 until the balance reaches \$500,000.

27 (f) The commission may assess and collect additional fees

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1 from the applicant to recover the costs the commission incurs for
2 administrative review, technical review, and hearings on the
3 application.

4 SECTION 24. Subsection (a), Section 401.302, Health and
5 Safety Code, is amended to read as follows:

6 (a) The department, in coordination with the commission,
7 may set and collect an annual fee from the operator of each nuclear
8 reactor or other fixed nuclear facility in the state that uses
9 special nuclear material.

10 SECTION 25. Subsections (c), (e), (f), and (g), Section
11 401.305, Health and Safety Code, are amended to read as follows:

12 (c) Money and security in the perpetual care account may be
13 administered by the department or commission only for the
14 decontamination, decommissioning, stabilization, reclamation,
15 maintenance, surveillance, control, storage, and disposal of
16 radioactive substances [~~material~~] for the protection of the public
17 health and safety and the environment under this chapter and for
18 refunds under Section 401.303.

19 (e) The department or commission may use money in the
20 perpetual care account to pay for measures:

21 (1) to prevent or mitigate the adverse effects of
22 abandonment of radioactive substances [~~materials~~], default on a
23 lawful obligation, insolvency, or other inability by the holder of
24 a license issued by the department or commission to meet the
25 requirements of this chapter or of department or commission rules;
26 and

27 (2) to assure the protection of the public health and

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1 safety and the environment from the adverse effects of ionizing
2 radiation.

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

11 (g) The existence of the perpetual care account does not
12 make the department or commission liable for the costs of
13 decontamination, transfer, transportation, reclamation,
14 surveillance, or disposal of radioactive substances [~~material~~]
15 arising from a license holder's abandonment of radioactive
16 substances [~~material~~], default on a lawful obligation, insolvency,
17 or inability to meet the requirements of this chapter or of
18 department or commission rules.

19 SECTION 26. Section 401.343, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 401.343. RECOVERY OF SECURITY. (a) The department or
22 commission shall seek reimbursement, either by an order of the
23 department or commission or a suit filed by the attorney general at
24 the [~~department's~~] request of the department or commission, of
25 security from the perpetual care account used by the department or
26 commission to pay for actions, including corrective measures, to
27 remedy spills or contamination by radioactive substances

1 ~~[material]~~ resulting from a violation of this chapter relating to
2 an activity under the ~~[department's]~~ jurisdiction of the department
3 or commission or a violation of a rule, license, registration, or
4 order adopted or issued by the department or commission under this
5 chapter.

6 (b) On request by the department or commission, the attorney
7 general shall file suit to recover security under this section.

8 SECTION 27. The heading to Subchapter K, Chapter 401,
9 Health and Safety Code, is amended to read as follows:

10 SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS [~~NATURAL RESOURCE~~
11 ~~CONSERVATION~~] COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD
12 COMMISSION OF TEXAS

13 SECTION 28. Subsections (a) and (b), Section 401.412,
14 Health and Safety Code, are amended to read as follows:

15 (a) Notwithstanding any other provision of this chapter and
16 subject to Sections 401.102 and 401.415, the commission has sole
17 and exclusive authority to directly regulate and to grant, deny,
18 renew, revoke, suspend, amend, or withdraw licenses for the
19 disposal of radioactive substances. [~~In this subsection,~~
20 ~~"radioactive substance" does not include by-product material as~~
21 ~~defined by Section 401.003(3)(B).~~]

22 (b) Notwithstanding any other provision of this chapter,
23 the commission [~~commissioner~~] has the sole and exclusive authority
24 to grant, deny, renew, revoke, suspend, amend, or withdraw licenses
25 for the recovery and processing of source material or disposal of
26 by-product material under Subchapter G.

27 SECTION 29. Section 401.413, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A
3 person required by another section of this chapter to obtain a
4 license for the disposal of a radioactive substance is required to
5 obtain the license from the commission and not from the department.
6 ~~[This section does not apply to a person required to obtain a~~
7 ~~license for recovery or processing of source material or for~~
8 ~~recovery, processing, or disposal of by-product material as defined~~
9 ~~by Section 401.003(3)(B).]~~

10 SECTION 30. Section 401.414, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 401.414. MEMORANDA ~~[MEMORANDUM]~~ OF UNDERSTANDING. The
13 Texas ~~[Natural Resource Conservation]~~ Commission on Environmental
14 Quality, the Health and Human Services Commission, and the Railroad
15 Commission of Texas ~~[and the board of health]~~ by rule shall adopt
16 memoranda ~~[a memorandum]~~ of understanding defining their
17 respective duties under this chapter.

18 SECTION 31. Section 361.015, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The
21 commission is the state agency under Chapter 401 that licenses and
22 regulates radioactive waste storage, processing, and disposal
23 activities not preemptively regulated by the federal government.

24 (b) Except as provided by Subsection (a), the Health and
25 Human Services Commission, acting through the Department of State
26 Health Services or other department as designated by the executive
27 commissioner of the Health and Human Services Commission, [The

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1 ~~Texas Department of Health]~~ is the state agency under Chapter 401
2 that regulates radioactive waste activities [~~, excluding disposal,~~
3 not preemptively regulated by the federal government.

4 SECTION 32. Subchapter D, Chapter 27, Water Code, is
5 amended by adding Section 27.0513 to read as follows:

6 Sec. 27.0513. AREA PERMITS AND PRODUCTION AREAS FOR URANIUM
7 MINING. (a) The commission may issue a permit pursuant to Section
8 27.011 that authorizes the construction and operation of two or
9 more similar injection wells within a specified area for mining of
10 uranium. An application for a new permit issued pursuant to Section
11 27.011, a major amendment of such a permit, or a renewal of such a
12 permit for mining of uranium is subject to the public notice
13 requirements and opportunity for contested case hearing provided
14 under Section 27.018.

15 (b) For a permit for mining of uranium issued on or after
16 September 1, 2007, pursuant to Section 27.011, the term of the
17 permit to authorize injection for recovery of uranium shall be 10
18 years. The holder of a permit for mining of uranium issued by the
19 commission before September 1, 2007, pursuant to Section 27.011,
20 must submit an application to the commission before September 1,
21 2012, for renewal of the permit to authorize construction and
22 operation of injection wells for mining of uranium. Authority to
23 construct or operate injection wells for recovery of uranium under
24 a permit issued before September 1, 2007, pursuant to Section
25 27.011, expires on September 1, 2012, if an application for renewal
26 of the permit is not submitted to the commission before September 1,
27 2012. Expiration of authority under this subsection does not

1 relieve the permit holder from obligations under the permit or
2 applicable rules, including obligations to restore groundwater and
3 to plug and abandon wells in accordance with the requirements of the
4 permit and applicable rules.

5 (c) The commission may issue a holder of a permit issued
6 pursuant to Section 27.011 for mining of uranium an authorization
7 that allows the permit holder to conduct mining and restoration
8 activities in production zones within the boundary established in
9 the permit. The commission by rule shall establish application
10 requirements, technical requirements, including the methods for
11 determining restoration table values, and procedural requirements
12 for any authorization.

13 (d) Notwithstanding Sections 5.551, 5.556, 27.011, and
14 27.018, an application for an authorization submitted after
15 September 1, 2007, is an uncontested matter not subject to a
16 contested case hearing or the hearing requirements of Chapter 2001,
17 Government Code, unless the authorization seeks any of the
18 following:

- 19 (1) an amendment to a restoration table value;
- 20 (2) the initial establishment of monitoring wells for
21 any area covered by the authorization, including the location,
22 number, depth, spacing, and design of the monitoring wells, unless
23 the executive director uses the recommendation of an independent
24 third-party expert chosen by the commission; or

- 25 (3) an amendment to the type or amount of bond required
26 for groundwater restoration or by Section 27.073 to assure that
27 there are sufficient funds available to the state for groundwater

1 restoration or the plugging of abandoned wells in the area by a
2 third-party contractor.

3 (e) The executive director may use an independent
4 third-party expert if:

5 (1) the expert meets the qualifications set by
6 commission rules for such experts;

7 (2) the applicant for the authorization agrees to pay
8 the costs for the work of the expert; and

9 (3) the applicant for the authorization is not
10 involved in the selection of the expert or the direction of the work
11 of the expert.

12 (f) An application seeking approval under Subsections
13 (d)(1)-(3) is subject to the public notice and contested hearing
14 requirements provided in Section 27.018.

15 SECTION 33. (a) On the effective date of this Act, the
16 following rights, powers, duties, obligations, functions,
17 activities, property, programs, and appropriations are transferred
18 to the Texas Commission on Environmental Quality:

19 (1) all rights, powers, duties, obligations,
20 functions, and activities:

21 (A) that Chapter 401, Health and Safety Code,
22 assigns to the Texas Department of Health, the Texas Board of
23 Health, or their successor agencies or to the governing body,
24 officers, or employees of that department, that board, or their
25 successor agencies, including the Health and Human Services
26 Commission and the Department of State Health Services; and

27 (B) that are related to licensing and regulation

1 of:

2 (i) radioactive substances recovery,
3 storage, processing, and disposal; or

4 (ii) long-term care of decommissioned sites
5 for disposal of by-product material;

6 (2) all equipment, information, documents,
7 facilities, and other property of the Health and Human Services
8 Commission or the Department of State Health Services pertaining to
9 licensing and regulation of:

10 (A) radioactive substances recovery, storage,
11 processing, and disposal under the jurisdiction of the Texas
12 Commission on Environmental Quality as provided by Subsection (b),
13 Section 401.011, Health and Safety Code, as amended by this Act; or

14 (B) long-term care of decommissioned sites for
15 disposal of by-product material;

16 (3) all appropriations for the state fiscal biennium
17 that begins September 1, 2007, made to the Health and Human
18 Services Commission or the Department of State Health Services for
19 activities related to licensing and regulation of:

20 (A) radioactive substances recovery, storage,
21 processing, and disposal under the jurisdiction of the Texas
22 Commission on Environmental Quality as provided by Subsection (b),
23 Section 401.011, Health and Safety Code, as amended by this Act; or

24 (B) long-term care of decommissioned sites for
25 disposal of by-product material; and

26 (4) the unexpended and unobligated portions of the
27 appropriations for the state fiscal biennium beginning

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1 September 1, 2005, made to the Health and Human Services Commission
2 or the Department of State Health Services for activities described
3 by Subdivision (3) of this subsection.

4 (b) Appropriations transferred under Subdivision (4),
5 Subsection (a), of this section are transferred for the remainder
6 of that state fiscal biennium.

7 (c) The Texas Commission on Environmental Quality, as of the
8 date of the transfer prescribed by Subsection (a) of this section,
9 has full responsibility for the administration and enforcement of
10 laws related to licensing or regulation of radioactive substances
11 recovery, storage, processing, and disposal under the jurisdiction
12 of the commission as provided by Subsection (b), Section 401.011,
13 Health and Safety Code, as amended by this Act, and licensing or
14 regulation of long-term care of decommissioned sites for the
15 disposal of by-product material. The Texas Commission on
16 Environmental Quality shall carry out all related duties,
17 responsibilities, functions, and activities as provided by law,
18 including those assigned by any other Acts of the 80th Legislature,
19 Regular Session, 2007.

20 (d) The transfer of rights, powers, duties, obligations,
21 functions, activities, property, and programs of the Health and
22 Human Services Commission or the Department of State Health
23 Services to the Texas Commission on Environmental Quality made by
24 this Act does not affect or impair any act done or obligation,
25 right, license, permit, requirement, or penalty accrued or existing
26 under the former law; that law remains in effect for the purposes of
27 any action concerning such an act done or obligation, right,

1 license, permit, requirement, or penalty. The Texas Commission on
2 Environmental Quality shall continue a proceeding of the Health and
3 Human Services Commission or the Department of State Health
4 Services that is related to a responsibility, duty, activity,
5 function, or program transferred by this Act, including processing
6 an application for a license or other authorization and including
7 enforcing the requirements of Chapter 401, Health and Safety Code,
8 or a rule adopted under that chapter. A rule of the Health and Human
9 Services Commission or the Department of State Health Services
10 related to a responsibility, duty, activity, function, or program
11 transferred by this Act is enforceable as a rule of the Texas
12 Commission on Environmental Quality until the Texas Commission on
13 Environmental Quality adopts other rules.

14 (e) Control of and title to all property and material
15 acquired by this state or an agency of this state under Section
16 401.267, Health and Safety Code, before the effective date of this
17 Act shall be transferred to the Texas Commission on Environmental
18 Quality on this state's behalf as soon as practicable. This
19 subsection does not apply to property or material sold by the state
20 under Subsection (b) of that section before the effective date of
21 this Act.

22 (f) The Texas Commission on Environmental Quality shall
23 provide an opportunity for employees of the Health and Human
24 Services Commission or the Department of State Health Services who
25 have performed duties related to a right, power, duty, obligation,
26 responsibility, function, activity, or program transferred by this
27 Act to request a transfer to commission employment. In making

1 employment decisions under this subsection, the Texas Commission on
2 Environmental Quality shall:

3 (1) ensure that state and federal requirements are met
4 by commission employees; and

5 (2) consider the value of maintaining continuity in
6 the personnel staffing relevant programs.

7 (g) The Texas Commission on Environmental Quality, the
8 Health and Human Services Commission, and the Department of State
9 Health Services shall cooperate in preventing any delay that may be
10 caused by or may occur in the transfer of property or personnel or a
11 right, power, duty, obligation, responsibility, function,
12 activity, or program made by this Act.

13 (h) To expedite the transfers made by this Act of rights,
14 powers, duties, obligations, functions, activities, property, and
15 programs, and to prevent delays related to any of the rights,
16 powers, duties, obligations, functions, activities, property, or
17 programs, the Texas Commission on Environmental Quality may
18 contract with any person to assist the commission. The commission
19 may assess and collect additional fees from an applicant affected
20 by performance under a contract under this subsection to recover
21 the commission's contracting costs.

22 (i) The transfers made by this Act do not affect any matter
23 that is the subject of a court proceeding pending on the effective
24 date of this Act.

25 (j) The Texas Commission on Environmental Quality shall
26 continue any applications review or processing and any hearings
27 that concern a matter subject to transfer under Subsection (a) of

1 this section that, on the date of the transfer, is being conducted
2 by the Health and Human Services Commission or the Department of
3 State Health Services or their successor agencies. The agencies
4 shall cooperate and consult with each other to ensure that any delay
5 necessitated by the transfer is minimized to the greatest extent
6 possible. The Texas Commission on Environmental Quality shall
7 utilize progress made on any technical review or environmental
8 analysis conducted by the department prior to the effective date of
9 this Act.

10 (k) An application for a new license to dispose of
11 by-product material that is filed with the Department of State
12 Health Services on or before January 1, 2007, and that has not been
13 referred to the State Office of Administrative Hearings by the
14 department before the effective date of this Act shall be processed
15 by the Texas Commission on Environmental Quality following the
16 effective date of this Act as follows:

17 (1) a license application subject to this subsection
18 shall be governed only by the technical rules and regulations of the
19 department that are effective on the effective date of this Act;

20 (2) the commission shall complete any technical review
21 of a license application subject to this subsection and determine
22 whether a draft license shall be issued on or before October 1,
23 2007. The commission shall utilize progress made on any technical
24 review or environmental analysis conducted by the department before
25 the effective date of this Act. In order to meet the deadline
26 provided by this subdivision, the commission may contract with the
27 department or other entities for completion of any portion of the

1 technical review that has not been completed upon the effective
2 date of this Act. The commission may assess and collect additional
3 fees from the applicant to recover costs the commission incurs for
4 technical review of a license application subject to this
5 subsection;

6 (3) the commission shall render a final decision on a
7 license application subject to this subsection on or before
8 December 31, 2008; and

9 (4) a contested case hearing held on a license
10 application subject to this subsection that was filed with the
11 department on or before January 1, 2007, may not exceed one year in
12 duration, measured from the date of referral by the commission of
13 the application to the State Office of Administrative Hearings
14 until the commission makes a final decision on the application.
15 Discovery in such a hearing shall be limited to not more than 60
16 days in order to meet this limitation. Notice of hearing shall be
17 provided to the applicant, the office of public interest counsel,
18 the executive director of the commission, and the person who timely
19 requested a contested case hearing by mail at least 10 days in
20 advance of the hearing.

21 (1) This subsection applies only to an applicant for a
22 license subject to Subsection (k) of this section. Notwithstanding
23 rules adopted under Subsection (f), Section 401.263, Health and
24 Safety Code, as amended by this Act, and to the extent not
25 prohibited under federal law, the applicant, at the applicant's own
26 risk, may begin major construction related to the activities for
27 which the license application was made at the time technical review

1 of the application has been made and an environmental analysis is
2 prepared under Section 401.263, Health and Safety Code. The Texas
3 Commission on Environmental Quality may oversee and govern the
4 construction authorized by this subsection in the same manner and
5 to the same extent as if the construction were authorized by a
6 license issued by the commission, and the construction is subject
7 to relevant commission rules as if the construction were authorized
8 by a license issued by the commission.

9 SECTION 34. (a) This Act does not impair, delay, or affect
10 the priority established by law for processing and review of the
11 application for a license to dispose of low-level radioactive waste
12 that was filed with the Texas Commission on Environmental Quality
13 before January 1, 2007.

14 (b) The Texas Commission on Environmental Quality shall
15 give priority to the processing and review of the license
16 application described by Subsection (a) of this section over all
17 other applications that pertain to radioactive substances or
18 radioactive waste pending before the commission except for those
19 applications the executive director of the Texas Commission on
20 Environmental Quality determines are necessarily of a higher
21 priority to avert or address an emergency concerning the public
22 health or safety.

23 (c) Subject to the priority given under Subsection (b) of
24 this section to the application, the Texas Commission on
25 Environmental Quality shall give priority to the review and
26 processing of:

27 (1) an application for the commercial disposal of

1 by-product material;

2 (2) an application for termination of a license to
3 recover or process source material and dispose of associated
4 by-product material generated in this state; and

5 (3) a new application for a permit to recover or
6 process source material and dispose of associated by-product
7 material generated in this state.

8 SECTION 35. Notwithstanding other law or any rule on the
9 subject of timeliness of an applicant providing information
10 pertaining to an application for a license from the Texas
11 Commission on Environmental Quality, the applicant for a license
12 shall assist the commission in meeting any deadlines imposed by
13 Chapter 401, Health and Safety Code, by submitting to the
14 commission any information the commission requires regarding the
15 application in a prompt and timely manner. The deadlines imposed by
16 this Act and by Chapter 401, Health and Safety Code, as amended by
17 this Act, are based on the assumptions that the applicant timely
18 submits a complete application and that all requirements are met.

19 SECTION 36. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect on the 91st day after the last day of
24 the legislative session.

S.B. No. 1604

David Keenhurst
President of the Senate

Jim Caddell
Speaker of the House

I hereby certify that S.B. No. 1604 passed the Senate on April 17, 2007, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendment on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Aetsy Spaw
Secretary of the Senate

I hereby certify that S.B. No. 1604 passed the House, with amendment, on May 23, 2007, by the following vote: Yeas 142, Nays 3, two present not voting.

Robert Hamey
Chief Clerk of the House

Approved:

15 JUN 07
Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8 PM O'CLOCK
JUN 15 2007
Roger Williams
Secretary of State