

CHAPTER 878

H.B. No. 2318

AN ACT

relating to the Texas Low-Level Radioactive Waste Disposal Authority and the transportation of radioactive materials and waste.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 402.003, Health and Safety Code, is amended to read as follows:  
Sec. 402.003. DEFINITIONS. In this chapter:

(1) [~~“Affected political subdivision” means a municipality, county, hospital district, school district, water district, or other political subdivision of this state that may reasonably be expected to incur expenses in connection with additional fire, police, education, utility, public access, and other governmental services, public works projects, and planning that are required by that political subdivision as a result of the construction and operation of a disposal site in or adjacent to the political subdivision.~~]

[(2)] “Authority” means the Texas Low-Level Radioactive Waste Disposal Authority.

(2) [(3)] “Board” means the board of directors of the authority.

(3) [(4)] “Contract operator” means a political subdivision or agency of the state or a private entity with which the authority has entered into a contract under Section 402.212.

(4) [(5)] “Department” means the Texas Department of Health.

(5) [(6)] “Disposal site” means the property and facilities acquired, constructed, and owned by the authority at which low-level waste can be processed and disposed of permanently.

(6) [(7)] “Low-level waste” means radioactive material that has a half-life of 35 years or less or fewer than 10 nanocuries per gram of transuranics, and may include radioactive

material not excluded by this subdivision with a half-life of more than 35 years if special criteria for disposal of that waste are established by the department. The term does not include irradiated reactor fuel and high-level radioactive waste as defined by Title 10, Code of Federal Regulations.

(7) [(8)] "Management" means establishing, adopting, and entering into and assuring compliance with the general policies, rules, and contracts that govern the operation of a disposal site.

(8) [(9)] "Operation" means the control, supervision, and implementation of the actual physical activities involved in the receipt, processing, packaging, storage, disposal, and monitoring of low-level waste at a disposal site, the maintenance of a disposal site, and any other responsibilities designated by the board as part of the operation.

(9) [(10)] "Person" includes a legal successor to or representative, agent, or agency of any person.

(10) [(11)] "Radioactive material" means solid, liquid, or gaseous material, whether occurring naturally or produced artificially, that emits radiation spontaneously.

(11) [(12)] "Rangeland and wildlife management plan" means a plan that applies rangeland and wildlife habitat management techniques to land located in the vicinity of a disposal site so that the natural productivity and economic value of the land are enhanced.

(12) [(13)] "Bond" means any type of obligation issued by the authority under this chapter, including a certificate of obligation, bond, note, draft, bill, warrant, debenture, interim certificate, revenue or bond anticipation note, or other evidence of indebtedness.

(13) "Host county" means the county in which the disposal site is or will be located.

(14) "Commission" means the Texas Natural Resource Conservation Commission.

SECTION 2. Section 402.013(c), Health and Safety Code, is amended to read as follows:

(c) After a disposal site is selected under Section 402.090, the governor shall appoint to the board, at the earliest opportunity, at least one representative of the public as a representative of local interests. A representative of the public appointed to represent local interests must be a resident of the host county. *The representative may not be an elected county official or a county employee [in which the selected site is located].*

SECTION 3. Section 402.021(b), Health and Safety Code, is amended to read as follows:

(b) *In accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the [The] board shall hold an annual meeting in the host county with officials [of a county in which a disposal site is located] and [with] representatives of [affected] political subdivisions of the host county to discuss concerns relating to that disposal site.*

SECTION 4. Sections 402.031(c), (d), and (e), Health and Safety Code, are amended to read as follows:

(c) *Members of the committee shall be appointed for three-year terms by the board after consultation with officials of political subdivisions in the host county [Each affected political subdivision may appoint one person to the committee for a four-year term].*

(d) The committee shall [may]:

(1) conduct independent monitoring of disposal site activities as authorized by guidelines adopted by the board;

(2) make recommendations to the board concerning operations at the disposal site; and

(3) execute any other review and monitoring functions as recommended by the committee and approved by the board.

(e) Reasonable notice as *required [provided] by the board [rules]* must be given to the manager of a disposal site before a committee member enters a disposal site to exercise any function authorized by this section. *The board shall provide for quarterly unannounced inspections of disposal site activities.*

SECTION 5. Section 402.057, Health and Safety Code, is amended to read as follows:

Sec. 402.057. REPORTS TO LEGISLATURE. Not later than the 60th day before the date each regular legislative session convenes, the authority shall submit to the appropriate

legislative committees a biennial report that serves as a basis for periodic oversight hearings on the authority's operations and on the status of interstate compacts and agreements. *The report shall also discuss the status of funds held, expended, or disbursed by the host county under Section 402.252.*

SECTION 6. Section 402.058, Health and Safety Code, is amended to read as follows:

Sec. 402.058. HEALTH SURVEILLANCE SURVEY. The board, in cooperation with the *commission, the Texas Department of Health, [department]* and local public health officials, shall *develop [study the feasibility of developing]* a health surveillance survey for the population located in the vicinity of a disposal site.

SECTION 7. Section 402.088, Health and Safety Code, is amended to read as follows:

Sec. 402.088. HEARING. (a) A hearing under Section 402.085 shall be held at the county courthouse of the *host county [in which the proposed disposal site is located]*.

(b) The board shall give notice of the hearing on the proposed disposal site by publishing notice in English *and Spanish* in a newspaper published in the *host county [in which the proposed disposal site is to be located]*. The notice must be published at least once each week for four consecutive weeks beginning not later than the 31st day before the date set for the hearing.

(c) If a newspaper is not published in the *host county* or if no newspaper in the *host county* will publish the notice, the board shall post written notice of the hearing in three public places in the *host county*. The board shall post one of the notices at the door of the county courthouse. The notices must be posted for at least 30 consecutive days preceding the date set for the hearing.

SECTION 8. Section 402.094, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) *The authority may lease land owned by the authority that is not part of a licensed disposal site. Land leased by the authority under this section may be used only for agricultural, ranching, or grazing purposes.*

SECTION 9. Sections 402.152(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The *commission [department]* shall complete its review of the completeness and administrative sufficiency of the application within 30 days of receipt of the application from the authority. The authority shall promptly respond to the *commission's [department's]* requests for additional documentation or other information in order for the *commission [department]* to complete its sufficiency review of the application. If the *commission [department]* does not inform the authority within 45 days of receipt of the application that the application is administratively sufficient, the application is presumed to be administratively sufficient.

(e) The *commission [department]* shall:

(1) complete all activities associated with the review and processing of an application, including the publication of an environmental assessment, if required, but excluding public hearings, and either propose to issue or deny a license for the operation of the site no later than 15 months after the date that the application is declared or presumed to be administratively sufficient; and

(2) give priority to the review of the application over all other radioactive materials and waste licensing and registration matters pending before the *commission [department]*.

SECTION 10. Section 402.183(c), Health and Safety Code, is amended to read as follows:

(c) If practicable, a person who contracts with the authority shall obtain necessary supplies, equipment, and material for use under that contract from sources located in the *host county [in which the disposal site is located]* and shall employ required personnel from that county.

SECTION 11. Section 402.213, Health and Safety Code, as amended by Section 4, Chapter 583, and Section 4, Chapter 804, Acts of the 72nd Legislature, Regular Session, 1991, is reenacted to read as follows:

Sec. 402.213. CONTRACT AUTHORITY OF BOARD. In contracting with a contract operator, the board may:

(1) select the contract operator before it obtains the license for the disposal site so that the board may allow the contract operator to advise and consult with the board, general manager, and staff of the authority on the design and disposal plans for the site;

(2) require the contract operator to make all tests, keep all records, and prepare all reports required by licenses issued for disposal site operations;

(3) require standards of performance;

(4) require posting of a bond or other financial security by the contract operator to ensure safe operation and decommissioning of the disposal site; and

(5) establish other requirements, including operator liability requirements, necessary to assure that the disposal site is properly operated and that the public health and safety and the environment are protected.

SECTION 12. Section 402.214, Health and Safety Code, is amended to read as follows:

Sec. 402.214. PROVISIONS OF OPERATION CONTRACT. A contract to operate a disposal site must specify that:

(1) the board retains management authority over the disposal site and may monitor and inspect any part of the site and operations on the site at any time;

(2) the contract operator must operate the disposal site in a manner that complies with the law and licenses regulating operations at the site that are issued by the *commission* [department] and the federal government;

(3) the contract operator must comply with rules adopted by the board that govern operation of the disposal site; and

(4) the contract is subject to termination after notice and hearing if the contract operator fails to comply with a license issued for the disposal site by the *commission* [department] or by the federal government, fails to comply with the rules of the authority, or fails to comply with the contract.

SECTION 13. Section 402.219(c), Health and Safety Code, is amended to read as follows:

(c) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045;

(2) gives this state full administrative control over management and operation of the disposal site;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the disposal site;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the disposal site;

(5) requires the other state or states to join in any legal action involving liability from the disposal site;

(6) requires the other state or states to share the full cost of constructing the disposal site;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the *host* county in [which the disposal site is located] an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

SECTION 14. Section 402.220, Health and Safety Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) *The authority may construct facilities and procure equipment required to provide fire, police, and emergency medical services needed to support the disposal site.*

(d) *The facilities shall be:*

(1) *constructed proximate to the disposal site or in the nearest community, as determined by the board; and*

(2) *in operation before the first day of operation of the disposal site.*

(e) *The board may contract with local governments, political subdivisions, or nonprofit corporations to operate these facilities.*

SECTION 15. Section 402.228(b), Health and Safety Code, is amended to read as follows:

(b) On completion of decommissioning activities and receipt of necessary approval from federal and state agencies, the board shall, if required by law, transfer to the *commission* [department] fee simple title to the disposal site.

SECTION 16. Subchapter I, Chapter 402, Health and Safety Code, is amended to read as follows:

#### SUBCHAPTER I. LOCAL PUBLIC PROJECTS [IMPACT ASSISTANCE]

Sec. 402.251. ~~DEFINITION [LOW-LEVEL RADIOACTIVE WASTE DISPOSAL IMPACT ASSISTANCE]. In this subchapter, "local" means located in the host county [The citizen's advisory committee shall coordinate and make recommendations to the board concerning requests from affected political subdivisions for assistance to compensate for impacts associated with the disposal site and allocations of impact assistance funds].~~

Sec. 402.252. LOCAL PUBLIC PROJECTS [RULES FOR IMPACT ASSISTANCE].

(a) *The board shall quarterly transfer money in the low-level waste fund generated by planning and implementation fee surcharges under Sections 402.2721(e) and (f), and that portion of waste disposal fees identifiable as adopted for the purposes of Sections 402.273(a)(3) and (b) to the commissioners court of the host county.*

(b) *The commissioners court of the host county may:*

(1) *spend the money for local public projects; or*

(2) *disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.*

(c) *Money received from the low-level waste fund under this section may be spent only for local public projects that are for the use and benefit of the public at large. The board shall adopt guidelines for the expenditure of money received under this section, and the commissioners court shall spend or disburse the money for use according to those guidelines.*

(d) *Annually the commissioners court shall provide to the board a detailed accounting of the money held, expended, or disbursed by the county. [The committee shall adopt rules establishing:*

[1] ~~criteria for determining the adverse effect that the construction and operation of a disposal site will have on affected political subdivisions;~~

[2] ~~priorities of needs for affected political subdivisions; and~~

[3] ~~methods for monitoring the uses and effectiveness of impact assistance funds allocated to affected political subdivisions under this chapter.]~~

Sec. 402.253. EXEMPTION OF FUNDS FROM REVIEW [IMPACT ASSISTANCE ALLOCATION]. *Funds received by the commissioners court of the host county for local public projects are not loans or grants-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code. [(a) The committee shall annually prepare and recommend to the board for final approval a budget that allocates impact assistance funds to affected political subdivisions.*

*[(b) The committee shall allocate to each affected political subdivision the amount required for impact assistance as provided by this subchapter.*

~~(c) Each affected political subdivision must show impact on it by providing adequate supporting information to the committee.~~

~~(d) Except as provided by Subsection (e), an affected political subdivision may not receive as impact assistance more than the amount equal to the product of the amount designated by the board under this chapter as available for impact assistance allocation and the ratio of each affected political subdivision's assessed tax valuation to the total assessed tax valuation of all the affected political subdivisions.~~

~~(e) If the amount determined for an affected political subdivision under Subsection (d) is less than the actual amount that the affected political subdivision shows to be required for impact assistance, the committee may allocate to the affected political subdivision an amount that exceeds the determined amount if all affected political subdivisions do not qualify for their maximum allocations permitted under Subsection (d).~~

~~[Sec. 402.254. EXEMPTION OF FUNDS FROM REVIEW. Impact assistance funds received by affected political subdivisions under this subchapter are not loans or grants in aid subject to review by a regional planning commission under Chapter 391, Local Government Code.]~~

SECTION 17. Sections 402.272(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The board shall have collected a waste disposal fee to be paid by each person who delivers low-level waste to the authority for disposal. ~~[Additionally, the board shall collect a low-level radioactive waste planning and implementation fee. These fees shall as closely as possible allow the board to reimburse itself for the present costs of administering, implementing, and planning the activities authorized by this chapter and to reimburse the general revenue fund for the expenses incurred and paid by the authority in selecting, seeking approval for, and constructing a disposal site. Money received from these fees shall be deposited in the state treasury to the credit of the fund which since the creation of the authority was the source for funds used to pay the expenses of administering these low-level radioactivity waste disposal activities.]~~

(b) The board by rule shall adopt and periodically revise waste disposal fees according to a schedule that is based on the projected annual volume of low-level waste received, ~~[and] the relative hazard presented by each type of low-level waste that is generated by the users of radioactive materials, and the costs identified in Section 402.273. [The board by rule shall establish minimum and maximum annual fees which are to be calculated and assessed based upon the factors contained in Subsection (a) above.]~~

SECTION 18. Section 402.2721, Health and Safety Code, is amended to read as follows:

Sec. 402.2721. PLANNING AND IMPLEMENTATION FEES. (a) The board shall adopt and periodically revise a planning and implementation fee to be paid by each person in this state who is licensed by the department pursuant to the Texas Radiation Control Act, or by the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act to possess or use radioactive material or to own or operate a production or utilization facility or other fixed nuclear facility in this state.

*(b) This fee shall be in an amount that is sufficient to allow the authority to recover present and future costs of administering, implementing, and planning the activities authorized by this chapter before the operation of a disposal site and to reimburse the general revenue fund for expenses incurred and paid by the authority in selecting, characterizing, and licensing a disposal site.*

(c) This fee does not apply to health care providers or institutions of higher education until a state disposal facility is available to receive the generated wastes.

(d) [(b)] Fees established under this section shall:

(1) include minimum and maximum annual fees in an amount of at least \$5 million for the 1992–1993 biennium to pay for the estimated costs of administering, implementing, and planning the activities authorized by this chapter and shall include at least \$5 million to reimburse the general revenue fund for appropriations expended and incurred by the authority in selecting, characterizing, and licensing a disposal site;

(2) take into account, the projected annual volume and the relative hazard presented by each type of low-level waste generated;

(3) be collected by the department as provided by Subchapter H, Chapter 401;

(4) be deposited in the state treasury to the credit of the low-level waste fund, except that at least \$10 million assessed and collected in the 1992–1993 biennium to reimburse the general revenue fund for expenses incurred prior to September 1, 1991, shall be deposited in the state treasury to the credit of the general revenue fund;

(5) be paid in four quarterly equal installments beginning on January 1, 1992, and annually thereafter; and

(6) expire on the date the authority begins operation of a disposal facility.

(e) For the 1996–1997 biennium and subsequent bienniums, the board shall assess a surcharge of 10 percent of the fee established for the biennium.

(f) For the 1994–1995 biennium only, the board shall assess a surcharge of 10 percent of the fee established for the 1992–1993 biennium.

(g) Surcharges assessed under Subsections (e) and (f) shall be used to fund local public projects under Subchapter I.

(h) [(e)] In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste.

SECTION 19. Section 402.273, Health and Safety Code, is amended to read as follows:  
Sec. 402.273. WASTE DISPOSAL FEE CRITERIA. (a) Waste disposal fees adopted by the board must be sufficient to:

(1) allow the authority to recover operating and maintenance costs;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;

(3) provide an amount to fund local public projects under Subchapter I [~~compensate for impacts associated with the disposal site~~];

(4) provide an amount sufficient to fund, in whole or in part, a rangeland and wildlife management plan;

(5) provide an amount necessary to pay licensing fees and to provide security required by the commission [department] under law and commission [department] rules; and

(6) provide an amount necessary to fund debt service and necessary fees and charges, including insurance premiums and similar costs, associated with the issuance and payment of bonds under Subchapter K.

(b) [~~If the authority does not issue bonds under Subchapter K, the waste disposal fees must also include an amount sufficient to allow the authority to recover expenses incurred before beginning operation of the disposal site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site.~~]

[(e)] The amount required by Subsection (a)(3) [~~and designated by the board as available for impact assistance allocation under this chapter~~] may not be less than 10 percent of the annual gross receipts from waste received at the disposal site [~~and may not exceed \$300,000 a year for each generator of low-level waste. However, during periods of unusual volume generation caused by unscheduled refueling, unplanned outages, special maintenance, or system decontamination and decommissioning, the amount payable by the affected generator may not exceed \$500,000 a year for two consecutive years.~~]

SECTION 20. Sections 402.275(c), (d), (e), (f), (g), and (h), Health and Safety Code, are amended to read as follows:

(c) Money received by the authority, including waste disposal fees, *planning and implementation fees, surcharges on planning and implementation fees*, processing and packaging fees, civil penalties, payments to the State of Texas under Public Law 99-240, and other receipts collected by the authority under this chapter shall be deposited to the credit of the low-level waste fund.

(d) Except as provided by Subsection (f) [(g)], money in the low-level waste fund may be used to pay:

- (1) operating and maintenance costs of the authority;
  - (2) future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;
  - (3) licensing fees and to provide security required by the *commission* [department];
  - (4) money judgments rendered against the authority that are directed by a court of this state to be paid from this fund;
  - (5) expenses associated with implementation of the rangeland and wildlife management plan;
  - (6) ~~funds for local public projects under Subchapter I [impact assistance funds for affected political subdivisions];~~
  - (7) debt service and necessary fees and charges, including insurance premiums and similar costs, associated with the issuance and payment of bonds under Subchapter K; and
  - (8) expenses for any other purpose under this chapter.
- (e) ~~[If the authority does not issue bonds under Subchapter K, money in the low-level waste fund may be used to reimburse the general revenue fund for expenses incurred by the state before the first day of operation of the disposal site and for any other maintenance and operating expenses paid by appropriation from the general revenue fund.]~~

[(f)] A payment for debt service and related costs under Subsection (d)(7) has priority for payment from the low-level waste fund over a payment for another expense authorized by Subsection (d).

(f) [(g)] Payments to this state under Public Law 99-240 may be used only for the purposes stated in the federal law.

(g) [(h)] The authority may transfer money from the low-level waste fund to the radiation and perpetual care fund to make payments required by the *commission* [department] under Section 401.303.

SECTION 21. Section 402.056, Health and Safety Code, is repealed.

SECTION 22. (a) The surcharge imposed by Section 402.2721(f), Health and Safety Code, as added by this Act, shall be assessed not later than November 30, 1993.

(b) The money received by the Hudspeth County Commissioners Court under Section 402.252, Health and Safety Code, as amended by this Act, in the 1994-1995 biennium may be spent only on local public projects that are located within 10 miles of the disposal site.

SECTION 23. Section 401.052, Health and Safety Code, is amended to read as follows:

Sec. 401.052. ~~RULES [AND GUIDELINES] FOR TRANSPORTATION AND ROUTING.~~ (a) The board shall adopt rules ~~[and guidelines]~~ that provide for transportation and routing of radioactive material *and waste* in this state.

(b) *Rules adopted under this section for radioactive waste shall:*

(1) *to the extent practicable, be compatible with United States Department of Transportation and United States Nuclear Regulatory Commission regulations relating to the transportation of radioactive waste;*

(2) *require each shipper and transporter of radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;*

(3) *require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;*

(4) *require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility; and*

(5) *assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of radioactive waste originating in Texas or out-of-state.*

(c) *In promulgating rules under this section, the board shall consult with the advisory board and the Texas Natural Resource Conservation Commission.*

(d)(1) *Fees assessed under this section shall:*



(A) not exceed \$10 per cubic foot of shipped radioactive waste;

(B) be collected by the authority and deposited to the credit of the radiation and perpetual care fund; and

(C) be used exclusively by the department for emergency planning for and response to transportation accidents involving radioactive waste.

(2) Fee assessments under this section shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000.

(e) Money expended from the radiation and perpetual care fund to respond to accidents involving radioactive waste must be reimbursed to the radiation and perpetual care fund by the responsible shipper or transporter according to rules adopted by the board.

(f) In this section:

(1) "Shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

(2) "Authority" means the Texas Low-Level Radioactive Waste Disposal Authority.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 30, 1993: Yeas 128, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 2318 on May 28, 1993: Yeas 135, Nays 0, 2 present, not voting; the House adopted H.C.R. No. 182 authorizing certain corrections in H.B. No. 2318 on May 30, 1993, by a non-record vote; passed by the Senate, with amendments, on May 27, 1993: Yeas 31, Nays 0; the Senate adopted H.C.R. No. 182 authorizing certain corrections in H.B. No. 2318 on May 30, 1993.

Approved June 18, 1993.

Effective June 18, 1993.