

SUBJECT: Revising TNRCC and TDH regulation of radioactive materials

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Allen, Howard, Kuempel, Zbranek
0 nays
4 absent — Culberson, Dukes, Palmer, Talton

WITNESSES: For — None
Against — None
On — Richard Ratliff, Texas Department of Health

BACKGROUND: The Bureau of Radiation Control (BRC) of the Texas Department of Health (TDH) regulates all sources of radiation in accordance with Health and Safety Code, chapter 401. This includes use and handling of radioactive materials, x-ray sources, and non-ionizing laser sources used mainly in medical and industrial applications. In Texas, about 1,480 licensees store and use radioactive sources at more than 2,000 sites. BRC also regulates processing and storage of low-level radioactive waste and uranium mill tailings.

The Texas Natural Resource Conservation Commission (TNRCC) regulates low-level radioactive waste disposal and naturally occurring radioactive materials under Health and Safety Code, chapters 401 and 402.

DIGEST: CSHB 1171 would allow TDH or TNRCC, respectively, to exempt a source of radiation, a kind of use, or a user from the application of an agency rule under Health and Safety Code, chapter 401, if TDH or TNRCC determined that the exemption was not prohibited by law and would not result in a significant risk to public health, safety, and the environment.

The bill would delete the word “stimulated” before the phrase “emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm,” one of the statutory definitions of radiation in

Health and Safety Code, sec. 401.003(17).

CSHB 1171 would require that TNRCC — rather than TDH or TNRCC, as current law provides — require applicants to demonstrate that they are financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, or disposal. In a separate provision, the bill would allow rather than require TDH to do the same thing by rule. CSHB 1171 would require license holders to submit proof of financial qualifications to the department or commission as appropriate — rather than to the issuing agency, as current law provides — at intervals required by either board or commission rules.

The bill would add the decision of whether or not to renew a license to the list of other decisions already in statute — granting, denying, amending, revoking, or restricting a license — that TNRCC or TDH can make in view of the applicant's background, technical competence, and record in areas involving radiation. The bill also would allow the agency to consider the applicant's financial qualifications when deciding whether or not to grant, deny, amend, revoke, restrict, or renew a license.

The bill would repeal current law requiring TNRCC to reevaluate qualifications and security of byproduct licensees who maintain uranium mill tailing ponds, since TDH, not TNRCC, now regulates those licensees.

The bill would amend Health and Safety Code, secs. 401.384(a) and 401.381(a), concerning administrative and civil penalties, respectively, to delete the reference to a person who “violates” the chapter and replace it with a reference to a person who “causes, suffers, allows, or permits a violation of” the chapter.

The bill would replace references to civil penalties in Health and Safety Code, sec. 401.385 with references to administrative penalties. It would require administrative penalties collected by TDH under chapter 401 to be deposited in the radiation and perpetual care fund.

CSHB 1171 would take effect September 1, 1999. Provisions of the bill concerning deposits of administrative penalties into the radiation and perpetual care fund and concerning civil and administrative penalties would apply only to deposits or violations on or after that date.

SUPPORTERS
SAY:

CSHB 1171 would authorize TDH and TNRCC to exempt certain activities from agency rules to reflect the rapid pace of technological change, especially in the areas of x-rays, lasers, and radioactive materials. Sometimes, archaic rules actually endanger health rather than protect it.

For example, a state rule requiring certain lasers to have interlocking devices became dangerous when the machines were used for a new type of therapy. In cases like these, agencies need to move quickly to protect the public health and safety. The rulemaking process, which can take up to six months, is too slow. The bill would not allow exemptions to be granted if they would result in a significant risk to public health, safety, and the environment.

Deleting the word “stimulated” before the phrase “emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm” would allow BRC to have regulatory jurisdiction over certain kinds of laser equipment that are similar to lasers but do not fall under the strict definition of lasers. This equipment, which can include equipment to remove hair and tattoos, does not fall under TDH’s regulatory jurisdiction, although it can cause severe radiation burns and other injuries. Changes proposed by the bill would allow TDH to supervise the use of these devices.

TDH does not have the financial resources to comply with a requirement that the agency require all licensees to demonstrate their financial qualifications. TDH oversees more than 1,000 licensees. It would be appropriate for TNRCC to oversee licensees, however, because the commission oversees only the small number of licensees applying for disposal of low-level radioactive waste. CSHB 1171 would allow rather than require TDH to issue rules concerning which applicants must demonstrate financial qualifications, depending on the hazards of the operation. The time when a license is due for renewal is a perfect time for TNRCC or TDH to review a licensee’s financial qualifications. CSHB 1171 would amend the statutes to allow this.

CSHB 1171 would make it easier for TDH to impose civil and administrative penalties on companies that violate state laws regulating radioactive sources. Some of the responsible parties in these companies avoid paying penalties by saying that although they gave an order that resulted in a violation, they did not commit the violation themselves and so cannot be prosecuted. Amending the administrative and civil penalty statutes to allow penalties to be imposed on those who cause, suffer, allow, or permit a violation, rather than only on

those who violate a statute, would make these cases much easier to prosecute.

Administrative penalties for violations of radiation statutes or rules now are collected and deposited in general revenue. CSHB 1171 would require these funds to be deposited to the credit of the Radiation and Perpetual Care Fund, where they could be used for emergencies or cleanup and disposal of sources that have been abandoned or impounded. This would have little fiscal implication for the state, since over the past five years, the average annual amount of administrative penalties collected was \$28,000. The fund currently has no revenue, only financial security instruments that the agency requires of licensed uranium processors. If the state took title to a uranium mill tailing site, the fund could be used for maintenance or site cleanup.

Funds collected through administrative penalties would help TDH pick up abandoned sources that are discovered often in all parts of the state. In a recent case, the death of a widow whose husband, a physician, had stored a hazardous radium medical source in his garage left a garage full of hazardous material for which no one claimed responsibility. It is much safer for BRC to take custody of these kinds of sources than to leave them in place.

Replacing references to civil penalties in Health and Safety Code, sec. 401.385 with references to administrative penalties would correct a drafting error and clear up confusion regarding which penalties are civil and which are administrative. Administrative penalties allow greater flexibility in enforcement actions because an agency can impose them directly, while civil penalties generally must be brought by the attorney general in district court.

**OPPONENTS
SAY:**

Regulatory agencies should not be allowed to exempt sources or users of radiation from TDH or TNRCC rules. This authority could be abused if businesses succeeded in pressuring TDH to grant exemptions for financial rather than health reasons.

TDH, for example, already has granted an exemption by rule to allow the steel industry to dispose of radioactive dust in the event that cesium 137 accidentally gets into a smelter from a contaminated scrap metal source. These types of exemptions can result in a significant risk to public health.

Just as technology is changing rapidly, so is our knowledge about what is harmful. What an agency deems harmless today may turn out to be dangerous

in the future. That is why the state has rules in place and a process to change rules that allows people to voice their opinions about possible harmful effects. Allowing agencies to grant exemptions circumvents this process.

NOTES:

The committee substitute would include provisions not found in the original bill, including allowing TDH to consider an applicant's financial qualifications, allowing TDH and TNRCC to review an applicant's background and other factors when considering license renewals, and removing a requirement that TNRCC reevaluate byproduct license holders' qualifications every five years.

A related bill, HB 1172 by Chisum, which would replace the definition of low-level radioactive waste in Texas statutes with a new definition that would include references to federal government definitions, also on today's calendar.

Another related bill, HB 1910 by Chisum, would require that any license for the disposal or assured isolation of low-level radioactive waste be issued to the Texas Low-Level Radioactive Management Authority and would require TDH to license assured isolation facilities. The House Environmental Regulation Committee reported HB 1910 favorably as substituted on April 8.