

SUBJECT: Revised definition of low-level radioactive waste

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 — Raul Alvarez, Sierra Club, Lone Star Chapter; Alice Rogers, Texas Natural Resource Conservation Commission

BACKGROUND: The Bureau of Radiation Control of the Texas Department of Health (TDH) regulates all sources of radiation in accordance with Health and Safety Code, chapter 401, including the use and handling of radioactive materials, x-ray sources, and non-ionizing laser sources used mainly in medical and industrial applications.

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. Chapter 402 governs the Texas Low-Level Radioactive Waste Disposal Authority.

Radioactive waste is defined in Health and Safety Code, sec. 401.003(20) as radioactive waste other than uranium tailings or wastes, uranium ore, naturally occurring radioactive waste (NORM), or oil and gas NORM waste that:

- ! is discarded or unwanted and is not exempt under Health and Safety Code, sec. 401.106, which allows the Texas Board of Health to exempt certain sources from licensing or registration requirements; and
- ! would not require processing before it could have a beneficial reuse.

Low-level waste is defined in Health and Safety Code, sec. 402.003(6) as

waste having a half-life of 35 years or less or 10 nanocuries per gram of transuranic. It may include radioactive material with a half-life of more than 35 years if special criteria for disposal of that waste are established by TNRCC and not excluded by statute. Low-level waste does not include irradiated reactor fuel and high-level radioactive waste as defined by the Code of Federal Regulations (CFR).

Health and Safety Code, sec. 401.003(8) defines disposal as the isolation or removal of radioactive waste from mankind or mankind's environment without intent to retrieve it later. The term does not include emissions or discharges under department rules.

DIGEST:

CSHB 1172 would replace the current definitions of radioactive waste and low-level waste with a new definition of low-level radioactive waste in Health and Safety Code, sec. 401.004. This new definition would reference the definition, concentration limits, rules, and disposal criteria in the Code of Federal Regulations under the federal Nuclear Regulatory Commission (NRC).

The definition of low-level radioactive waste would *not* include spent nuclear fuel as defined by the CFR, uranium tailings or wastes, NORM, and oil and gas NORM waste.

The bill would repeal Health and Safety Code, sec. 401.028, which stipulates that anyone holding a TNRCC license for a radioactive waste disposal site cannot accept high-level radioactive waste, irradiated reactor fuel, or radioactive waste containing 10 or more nanocuries per gram of transuranic. The section that would be repealed also requires TNRCC to adopt criteria for disposing of waste with a half-life of more than 35 years and of radioactive waste that contains less than 10 nanocuries per gram of transuranics.

The bill would add "low-level" before all references to "radioactive waste" in Health and Safety Code, subtitle D, chapter 401. References to "radioactive material" would be changed to "low-level radioactive waste," and references to the "Low Level Waste Fund" would be changed to the "Low-Level Radioactive Waste Fund." The bill also would amend the definition of "disposal" in Health and Safety Code, sec. 401.003(8) to specify that the definition relates to low-level radioactive waste.

CSHB 1172 would add “radioactive” between all references to “low-level” and “waste” in Health and Safety Code, chapter 402. It would add “low-level” to all references to “radioactive waste” in Health and Safety Code, sec. 401.383, concerning criminal penalties for acts related to radioactive waste. The bill also would amend Water Code, sec. 7.184, concerning penalties for violations relating to radioactive waste, to add “low-level” before all references to “radioactive waste.”

The bill also would repeal archaic provisions and obsolete language concerning the Superconducting Super Collider, radioactive waste planning and implementation fees, and waste surcharge rebates made by the U.S. Department of Energy that no longer are available.

CSHB 1172 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

CSHB 1172 would change Texas statutes to make the definitions of low-level waste and radioactive waste conform to the NRC’s definition of low-level radioactive waste in Title 10, Chapter 1, CFR. According to TDH, 49 other states have adopted these federal definitions.

Making Texas’ statutes conform to federal law would ensure that the state retains “agreement state status” with the NRC. If the state lost this status, it also could lose jurisdiction over low-level radioactive waste in the state.

The last two times the NRC has come to inspect Texas’ radiation programs, it found that the state’s definitions were not compatible with the NRC’s regulatory program. Definitions in the Texas statutes are narrower than those of the NRC and do not include some sources that federal regulations cover.

If Texas decided to license a low-level radioactive waste disposal site, for example, the state statutes say that a low-level disposal site cannot accept radioactive waste containing 10 or more nanocuries per gram of transuranic, while the federal statutes define low-level waste to include waste containing up to 100 nanocuries per gram of transuranic. This would leave Texas with an “orphaned” waste containing between 10 and 100 nanocuries per gram of transuranic, giving the NRC grounds to challenge the state’s jurisdiction over the disposal of state low-level radioactive waste.

OPPONENTS
SAY:

The federal government does not require Texas to make the definition of radioactive waste in state statutes conform to the NRC definitions. Since the federal definitions of low-level radioactive waste are broader than the more restrictive Texas definitions, CSHB 1172 would allow waste that under current statutes cannot be disposed of as low-level waste because of its higher level of radioactivity to be put in a low-level waste dump in Texas.

Current state statutes specify that anyone holding a TNRCC license for a radioactive waste disposal site cannot accept radioactive waste containing 10 or more nanocuries per gram of transuranic. The law requires TNRCC to adopt criteria for disposing of waste with a half-life of more than 35 years. NRC definitions of low-level radioactive waste are not limited to materials with a half-life of 35 years, but define materials with 100 or more nanocuries per gram of transuranic as low-level waste.

Until the Legislature can appoint an interim committee to investigate the full implications of such a change, the state should keep the statutory definitions that the Legislature has enacted to protect public health and safety.

NOTES:

The original bill would have amended the definition of “disposal” to read “disposal of low-level radioactive waste,” while the committee substitute would define disposal “with regard to low-level radioactive waste.”

The substitute also would include in the definition of low-level radioactive waste a reference, not found in the original bill, to a provision in current law that allows the Board of Health to exempt certain sources from licensing or registration requirements. The substitute also would repeal archaic language that remained in the original bill as filed.

A related bill, HB 1171 by Chisum, which would allow TDH and TNRCC to exempt certain users or sources of radiation from agency rules and would give TDH jurisdiction over some kinds of laser-like equipment, also is on today’s House calendar.

Another related bill, HB 1910 by Chisum, which 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, was reported favorably as substituted by the House Environmental Regulation Committee on April 8