SUBJECT: Licensing a private entity to dispose of low-level radioactive waste

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Bonnen, Kuempel, Crownover, Chisum, W. Smith, West

0 nays

1 absent — Flores

WITNESSES: For — Douglas C. Kay, TXU Energy; Robert Session, Advocates for Responsible Disposal; *(On committee substitute:)* Robert J. Baker and Lloyd Eisenrich, Andrews Industrial Foundation

Against — Melanie Barnes, League of Women Voters of Texas; Karen Hadden, Sustainable Energy and Economic Development; Tristan Mendoza, Texas Radiation Online; Erin Rodgers, Sierra Club; Tom "Smitty" Smith, Public Citizen; Michele Weston, Women's Action Coalition of Austin; Alfredo Reza, Jr.; Richard Simpson

On — Michael Ford, Texas Radiation Advisory Board; *(On committee substitute:)* Jose Lopez, University of Texas Southwestern Medical Center

BACKGROUND: The federal Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments (42 U.S.C., sec. 2021c) require states to arrange to dispose of low-level waste generated within their borders, other than nuclear weapons-related waste generated by federal facilities. States may form compacts to create a single disposal site and may refuse to accept waste from states outside their compact. In 1993, Texas formed a compact with Maine and Vermont calling for Texas to host a facility to dispose of the three states' low-level radioactive waste. However, no facility has been developed, and in April 2002, Maine announced plans to withdraw from the compact.

In 1992, the Texas Low-Level Radioactive Waste Disposal Authority (LLRWDA) applied to the Texas Natural Resource Conservation Commission (TNRCC) for a waste-disposal facility license for a site near Sierra Blanca in Hudspeth County. The site proposal generated opposition, and in 1998, the

State Office of Administrative Hearings (SOAH) began a contested case hearing on the license application. SOAH judges recommended denying the license on grounds that the application lacked information on the fault line beneath the site and failed to address adequately the facility's potential socioeconomic impact on the local community. TNRCC commissioners agreed and denied the license application.

Several bills in the 76th and 77th Legislatures addressed low-level radioactive waste disposal (see Notes). The 76th Legislature in 1999 enacted HB 2954 by Gray, which abolished the LLRWDA and transferred its powers to TNRCC, now the Texas Commission on Environmental Quality (TCEQ).

Low-level radioactive waste falls under the jurisdiction of both TCEQ and the Texas Department of Health (TDH). TCEQ regulates disposal of low-level radioactive waste and has authority to issue a license for a disposal facility. TDH's Bureau of Radiation Control regulates and licenses the use, transport, and storage of radioactive materials, including low-level waste.

Low-level radioactive waste includes common materials such as paper, plastic, glass, and metal contaminated by radioactive material; equipment and tools used in certain industrial and medical processes; resins and filters used to purify water at nuclear power plants; clothes, syringes, test tubes, and other equipment used in handling radioactive materials; and animal carcasses, equipment, and products used in biomedical and pharmaceutical research. It does not include spent fuel from nuclear reactors, nor radioactive waste with high concentrations of uranium and plutonium. Because of the diversity of low-level radioactive waste, the amount of time necessary for a given item of waste to decay to relatively-safe background radiation levels varies. Some items may decay within seconds, while others may require millions of years. In general, however, the majority of the volume of low-level waste will decay to background levels within 100 years, according to TCEQ.

The U.S. Department of Energy (DOE) generates most of the federal government's low-level radioactive waste through handling and processing of radioactive materials, chemical separation procedures, weapons production, and cleanup of contaminated facilities.

For additional background, see House Research Organization Focus Report Number 77-21, *Low-Level Radioactive Waste: Beyond Sierra Blanca*, July 5, 2002.

DIGEST:

CSHB 1567 would authorize TDH to license and regulate disposal of low-level radioactive waste and would allow a private entity to hold a license to operate a facility to dispose of waste from the Texas compact. TDH also could authorize the license holder to dispose of low-level waste from federal facilities. The bill would establish a licensing procedure, criteria for evaluating license applications, and a license review process. The license holder would have to indemnify the state against any liabilities, provide at least $20 million in financial security, and pay 7.5 percent of the facility's gross receipts to the host county.

Compact waste would include low-level radioactive waste generated in Texas or a member state of the compact, or waste generated in another state and approved for importation by the compact commission. Federal waste would include low-level radioactive waste that was the responsibility of the federal government.

Licensing. TDH could issue only one license for a single facility to dispose of waste from compact states. A licensed facility would have to comply with state law, TDH rules, and rules meeting federal requirements for disposal. The license would be valid for 15 years and renewable in 10-year increments. CSHB 1567 would eliminate the restriction in current law that a license could be issued only to a public entity.

If an applicant for the compact waste-disposal license did not own subsurface mineral rights for the property on which the disposal facility was to be sited, TDH could permit the applicant to enter into a surface-use agreement that restricted mineral access to prevent intrusion into the facility site, to the extent allowed by federal law. If an applicant could not reach such an agreement with a private landowner, TDH could ask the attorney general to acquire the mineral right through condemnation proceedings.

TDH could not license or authorize operation of a disposal facility located:

- in a county located within 62 miles of the U.S.-Mexico border;

- in a county where average rainfall exceeded 20 inches per year;
- in a county adjoining certain segments of the Devils or Pecos rivers;
- in a 100-year floodplain; or
- less than 20 miles upstream from a reservoir built by the U.S. Bureau of Land Management, Army Corps of Engineers, or as a part of the state water plan.

To select an application for a compact waste-disposal license, TDH would have to publish notice that it was accepting applications, review all received applications for administrative completeness, select the application with the highest comparative merit according to specific evaluation criteria, conduct a technical review of the selected application, and prepare a draft license. TDH would have to publish notice of accepting applications in the *Texas Register* by January 1, 2004.

An application would have to include a nonrefundable $500,000 application processing fee. TDH would have to accept applications for a 30-day period beginning 180 days after publishing notice. Within 45 days of receiving an application, TDH would have to notify each applicant whose application was considered administratively incomplete. An applicant would have up to three 30-day opportunities to remedy the application before it could be rejected. To be considered administratively complete, an application would have to contain information about:

- the applicant's identity and qualifications;
- the proposed facility and site;
- types of disposal activities and quantities of waste to be managed at the facility;
- the schedule for construction, receipt of waste, and closure;
- financial assurance;
- the facility's design and methods of construction and operation;
- area and site characteristics, including environmental factors;
- safety programs to be implemented;
- a copy of the warranty deed or other instrument showing that the applicant had the required right, title, and interest in the land and buildings at the proposed facility;
- the application processing fee and proof of sufficient funds to cover any additional application processing costs; and

- a copy of a resolution of support by the commissioners court of the county in which the facility was to be located.

TDH or an independent contractor would have to prepare a written evaluation of every administratively complete application. TDH could request additional information for an application and would have to provide the applicant with two 30-day opportunities to respond.

TDH would have to evaluate applications according to specific criteria and would have to select the application with the highest comparative merit within 180 days of receiving the last timely filed application. Evaluation criteria would reflect a four-tiered scale of importance for comparing applications, in which the most weight would be given to Tier 1 criteria and progressively less to Tiers 2, 3, and 4.

TDH would have to deny, after an opportunity for a hearing, an application or an amendment or renewal of a license if the applicant's compliance history showed a history of violations demonstrating a consistent disregard for the regulatory process.

Evaluation criteria. Tier 1 criteria would include the natural characteristics of the proposed site, adequacy of the proposed facility to protect humans and the environment, and adequacy of financial assurance.

Natural characteristics of the site would include:

- environmental suitability of the site for the proposed activities;
- compatibility of waste disposal with nearby land uses that could affect performance of the site or monitoring of the facility;
- adequacy of plans to collect prelicense monitoring data and conduct monitoring of background radiation levels and other factors;
- possible effects of waste disposal on flora and fauna; and
- ease of access to the site.

Adequacy of the facility would include:

- capability of the proposed facility to isolate, shield, and contain waste in conformity with federal standards; and

- acceptable operational and long-term safety.

Financial assurance criteria would include:

- adequacy of the applicant's financial condition to conduct the proposed activities or address any unanticipated risks to public health and safety;
- adequacy of the applicant's financial assurance to cover potential injury to any property or person;
- adequacy of the applicant's financial security in relation to TDH rules; and
- degree of certainty that the applicant could maintain adequate financial security.

Tier 2 criteria would include:

- suitability and adequacy of the proposed facility's engineering and design; and
- suitability of the proposed facility for the chemical, radiological, and biological characteristics of low-level radioactive waste.

Tier 3 criteria would include the applicant's:

- technical qualifications to receive, store, process, and dispose of low-level radioactive waste;
- experience in managing and disposing of low-level radioactive waste or other materials;
- previous operating practices related to radioactive materials in Texas or elsewhere, including those of a parent, subsidiary, or affiliate;
- record of compliance with environmental laws, rules, and licenses;
- employee training programs related to the proposed facility;
- plans for monitoring, recordkeeping, reporting, detecting and cleaning up waste spills, decommissioning and postclosure, security, worker protection and monitoring, and background monitoring; and
- ability to manage the proposed facility for the term of the license.

Tier 4 criteria would include:

- compatibility of nearby land uses that could be affected by operation of the facility; and
- possible socioeconomic effects on communities in the host county.

Review. TDH would have to complete a technical review and prepare a draft license within 15 months of selecting the application with the highest merit. Upon completing the technical review and preparing a draft license, TDH would have to publish notice specifying the requirements for an affected person to request a contested case hearing.

If a hearing was requested, an administrative law judge of SOAH would have to conduct a contested case hearing on the application and draft license. Only the applicant, the public health commissioner, or an affected person could be admitted as a party to the hearing. The judge would have to issue a proposed decision within one year of the publication of notice. TDH would have to take final action on the proposed decision within 90 days.

Within 30 days after TDH took final action on a license application, an affected person could file a petition for judicial review. In reviewing an action taken on the application, a court could not substitute its judgment for that of the health commissioner or TDH on the weight of the evidence. The court could affirm the action in whole or in part and could reverse or remand the case for further proceedings if it found that the petitioner's rights had been prejudiced because an administrative action:

- violated a constitutional or statutory provision;
- exceeded TDH's statutory authority;
- was made unlawfully;
- was affected by other error of law;
- was not supported reasonably by evidence; or
- was arbitrary, capricious, or characterized by abuse of discretion.

Ownership. CSHB 1567 would require the license holder to convey to the state the title to compact waste upon receiving it for disposal. TDH would hold the title and interest in the waste on the state's behalf. A license holder authorized to dispose of federal waste would have to:

- arrange and pay for management, control, stabilization, and disposal of the waste and for decommissioning of disposal activity;
- upon decommissioning of the disposal of federal waste, convey to the federal government the rights, title, and interest in land and buildings at the site and the rights of access to the property; and
- formally acknowledge, before the authorization to dispose of federal waste expired, the conveyance to the federal government of all right, title, and interest in radioactive waste located on the property.

Liability. Transferring the title to the waste or any land or buildings to the state or federal government would not relieve the license holder of liability for any act or omission before the transfer or while the waste, land, or buildings were under the license holder's control. Accepting, storing, or disposing of federal waste would not create a liability under state law for the state or for any officer or agency of the state for damages, removal, or remedial action relating to the disposal site. The license holder authorized to dispose of federal waste would have to indemnify the state against any liability imposed under state or federal law.

Federal waste. TDH could authorize the license holder to dispose of waste from federal facilities. Federal waste would have to be disposed of in a separate and distinct facility next to the disposal facility for compact waste. TDH could restrict the amount and type of federal waste. Compact waste could not be commingled with federal waste. The license holder could not dispose of federal waste until the license holder began accepting compact waste for disposal.

Disposal and management. The license holder would have to dispose of compact waste classified as Class B or Class C within a reinforced concrete container and enclosed by a concrete barrier or structure, in such a way that the waste could be monitored and retrieved. The structure would have to be made of materials technologically equivalent or superior to reinforced concrete. TDH could require the license holder to dispose of certain high-radiation Class A waste in the same manner as Class B or C waste. To the extent practicable, TDH rules regarding waste disposal would have to conform to the federal classification of low-level radioactive waste.

A successful applicant would have to demonstrate the reasonableness of the proposed method for managing waste at the facility. Before selecting a method, the applicant would have to study alternative methods of waste management, including waste processing and reduction at the site of generation and above-ground isolation. A disposal facility should incorporate safeguards against meteorological conditions, such as hurricanes, tornados, earthquakes, tremors, violent storms, or flooding.

The bill would specify that a license holder must comply with federal regulations in accepting mixed waste for disposal at the compact facility or federal waste disposal facility.

Packaging and shipment. TDH would have to adopt rules for packaging low-level radioactive waste. The license holder could not accept a shipment of waste for disposal without first determining that the waste complied with all laws, rules, or standards for packaging or processing. The license holder would have to be notified in writing at least 72 hours in advance before receiving a shipment of over 75 cubic feet of waste. The license holder could charge a fee for repackaging or processing waste for disposal that had been packaged or processed improperly and would have to report to federal or state regulatory agencies any improperly processed or packaged wasted received for disposal.

Financial security. The licensee would have to provide at least $20 million in financial security. In setting the amount, TDH would have to consider the need for financial security to address risks to public health and safety that could arise after decommissioning and closing the facility. Financial security could be in the form of liability insurance.

Host county. The license holder would have to pay to the commissioners court of the host county 7.5 percent of the facility's gross receipts. The money would not be considered a loan or grant-in-aid that would be subject to review by a regional planning commission. TDH and local health officials would have to develop a health survey of the local population. TDH would have to hold at least one public meeting in the county in which the facility was to be located to receive comments on administratively complete applications.

Fees. CSHB 1567 would authorize the license holder to collect fees for disposing of compact waste. The TDH board would have to adopt and update compact waste-disposal fees, including rules for establishing customer and service classes and the applicability of fees. Fees would have to be sufficient to enable the license holder to recover costs, earn a reasonable profit, and provide a reasonable rate of return on capital investment.

Funds. A current-law requirement that unappropriated dedicated revenue become available for general government purposes on August 31, 2003, would not apply to the low-level radioactive waste fund. One-half of each payment received from a member of the compact could be used only for construction of the compact waste-disposal facility, and the remainder would go to the radiation and perpetual care fund.

TCEQ authority. The bill would authorize TCEQ to conduct studies, investigations, or research into low-level radioactive waste disposal. TCEQ could work with governmental or private entities on waste-disposal issues. The commission could apply for, receive, and accept funds from any source or could contract with governmental or private entities to carry out its work relating to low-level radioactive waste disposal.

CSHB 1567 would repeal provisions in current law that:

- authorize TDH to prohibit a low-level radioactive waste processor from accepting waste generated outside of the state;
- authorize TDH to collect a planning and implementation fee;
- establish the Low-Level Radioactive Waste Disposal Authority; and
- relate to the sale or lease of Permanent School Fund land for a disposal site.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 1567 would allow TDH to license a private company to operate a facility to dispose of low-level radioactive waste in Texas. The state has spent $50 million over 20 years in unsuccessful attempts to develop a facility. Meanwhile, radioactive waste has been stored at medical research facilities, hospitals, public universities, and nuclear power plants across the state. With one of only two disposal sites available to Texas generators scheduled to close

in five years, the state needs to move ahead with developing a waste-disposal facility in Texas.

Only two disposal sites in the nation — in Barnwell, S.C., and Clive, Utah — accept low-level radioactive waste from Texas generators. Beginning in 2008, the Barnwell site no longer will accept waste from Texas, nor from any states outside its regional compact. The Utah site accepts only the least radioactive class of low-level waste. Without a facility in Texas, many users of radioactive materials could find themselves forced to store radioactive waste on site indefinitely, stop using radioactive materials, or move to a state where a disposal facility was available.

Radioactive waste is a byproduct of many beneficial activities. Texas has more than 1,700 licensed users of radioactive materials that could generate low-level radioactive waste. Medical and scientific research, life-saving medical procedures, and nuclear power generation all produce low-level radioactive waste. Radioactive particles also are used in consumer products, such as smoke detectors, computer disks, and indicator lights in kitchen appliances. Currently, low-level radioactive waste from these processes and products is stored at nearly 60 sites across the state.

Establishing a facility to dispose of Texas' low-level radioactive waste would improve homeland security. Although security at the current temporary storage sites is adequate, it would be far safer to dispose of the waste permanently in a single facility. Moreover, containing all of Texas' low-level radioactive waste in a single facility would allow isolation and disposal away from the state's population centers.

Authorizing the license holder to dispose of federal waste, such as from DOE, would benefit Texas waste generators, who likely would pay less for disposal because the revenue from federal waste disposal potentially would lower the overall cost of operating the facilities. The additional revenue also would help to ensure the long-term financial stability of the operation, creating more jobs and tax revenue. DOE waste is no different in radioactivity from waste produced by a hospital, research university, or nuclear power plant. In fact, much of the DOE waste would have lower levels of radioactivity. Before sending waste for disposal, DOE would conduct an audit of the proposed facility, bringing additional expertise to oversight of the facility.

The amount of DOE waste that would be disposed of at a Texas facility would be much less than some claim, citing the total volume of waste that DOE expects to generate. However, the federal government often chooses to remediate radioactively contaminated dirt or other low-level waste on-site, instead of shipping it for disposal. Moreover, not all of the federal waste shipped for disposal would go to a Texas facility because of the many companies competing for federal waste disposal contracts.

While some have noted that every low-level radioactive waste disposal facility has leaked, these facilities were built decades ago, before new stricter federal siting and construction standards were put in place. Many of these facilities were sited near nuclear facilities for convenience, without regard for the geological and hydrological characteristics of a site. In addition, these facilities often disposed of liquid waste, which would be prohibited at a Texas facility. CSHB 1567 would require a facility to comply with modern federal requirements for siting and construction.

The bill would establish a detailed licensing procedure and would authorize TDH to regulate disposal of the waste. The application evaluation process would ensure that a proposed disposal facility met stringent technical and scientific standards for protection of public health and environmental safety. TDH would be the primary regulator of the site, and the state could enforce compliance with the license and with applicable laws and regulations.

The state would not have to pay to clean up the disposal facility. The bill would require the license holder to provide at least $20 million in financial security. TDH could set even higher requirements, because the agency would have to consider unanticipated post-closure risks to public health or safety in setting the amount. Moreover, the license holder would have to indemnify the state against any liabilities.

Claims that the waste-disposal compact contains a “loophole” that would allow unlimited importation of noncompact waste are greatly exaggerated. The compact agreement, enacted in Texas in 1993 and ratified by Congress in 1998, simply and clearly authorizes the compact commissioners, by majority vote, to enter into an agreement with a person, state, regional body, or group of states to deliver low-level waste to the compact facility for management or disposal. This provision gives the commission the flexibility to deal with

potential emergencies or other needs that may arise — for example, to dispose of lost or abandoned low-level radioactive materials from outside the compact that were found in Texas. Also, Texas holds six seats on the eight-member commission, and a body dominated by appointees of the Texas governor would not be likely to allow Texas to become a "national dumping ground" for radioactive waste.

Opponents have cited a scenario in which a license holder might choose not to renew the license when decommissioning of Texas' nuclear plants would generate increased compact waste. This argument relies on concocting a hypothetical situation and attributing evil motives to a company that would be licensed and regulated by the state. The license holder would be much more likely to provide safe and efficient waste disposal for Texas and members of the compact.

While some have raised security concerns about shipping radioactive waste to a disposal facility, toxic chemicals and other dangerous wastes already are transported by truck on our highways. CSHB 1567 would ensure security and safety by requiring that any waste be properly processed and packaged before shipment to the facility. Moreover, the evaluation criteria for selecting a license application would include an examination of the proposed facility's security plans.

Nuclear power plants are not suitable storage sites for low-level waste. These facilities have been sited and licensed to generate electricity, not accept waste for disposal. The criteria for licensing a nuclear power plant differ markedly from the requirements for a waste disposal facility. Also, storing waste at these sites would create grave security issues. Since the attack on the World Trade Center in New York in September 2001, nuclear facilities have been the most visible and often-discussed potential targets of terrorist activity. These facilities are easily accessible and convenient to densely-populated urban areas. Shipping radioactive waste to these facilities would make them even more enticing targets for terrorists. CSHB 1567 would ensure that low-level radioactive waste in Texas was disposed of safely and securely in a facility designed for that purpose.

Although a disposal facility would not be as heavily guarded as a nuclear power plant, it would have ample security for the activities conducted on site.

Nuclear power plants are heavily guarded because their reactors split atoms, a concept similar to detonating an atomic bomb. In contrast, a disposal facility would stabilize and dispose of low-level waste. Because of the different activities at these facilities, a disposal facility does not need the same level of security as a nuclear power plant.

CSHB 1567 would not favor a specific applicant for the license. It would, however, create a licensing process that would allow a facility to begin operation before the Barnwell disposal facility closes to Texas generators in 2008. Meeting this deadline necessarily would require that an applicant already have begun collecting site-specific data. With the rapid approach of the deadline, an on-site presence is vital to providing a disposal facility before Barnwell closes. The licensing process that CSHB 1567 would establish reflects the state's urgent need to provide a disposal facility to Texas generators and members of the compact.

OPPONENTS SAY:

CSHB 1567 would allow a private company to make millions of dollars in profit while leaving Texas stuck with a mountain of radioactive waste. Authorizing the license holder to dispose of federal waste would invite a private company to make a fortune by burying hundreds of millions of cubic feet of radioactive waste in West Texas. Unfortunately, every commercial low-level radioactive waste disposal facility in the nation has leaked. Long after a private company had made its money and gone, the state would be stuck with the long-term bill to clean up the site.

Private companies are eager to dispose of federal waste because the amount of waste expected to be generated by DOE dwarfs the expected volume of waste from the compact. The compact is expected to generate two to three million cubic feet of waste, whereas DOE expects to generate 300 million cubic feet of waste by 2070. With the facilities for compact waste and federal waste located on the same site, the vast majority of the site would be devoted to the disposal of federal waste in large underground trenches.

In addition to federal waste, licensing a disposal facility for compact waste could expose Texas to importing unlimited amounts of waste from other states or private companies. Under a loophole in the compact agreement, the compact commission may allow an unlimited amount of waste from outside the compact to be disposed of at a Texas facility. Although the majority of the

commission members would be from Texas, as political appointees they could be subject to outside influences. Waste disposal companies are notorious for making large campaign contributions. Also, Texas would be the first state to open a compact facility, and the commission could come under pressure from other states eager to make their radioactive waste someone else's problem.

Because of the length of time that radioactive waste remains dangerous, the state would be left to clean up the facility in the future. Some of the waste at the facility would remain radioactive for hundreds or thousands of years. There is no guarantee that a private company or its insurers would be around in the future to be held accountable if the facility failed or contaminated a water supply. The state would have to clean up the company's mess at the taxpayers' expense.

CSHB 1567 would not require adequate financial security. The $20 million in financial security that the bill would require for post-closure cleanup needs is minimal compared to estimates of the cost to clean up such a site. One study estimated that it would cost $370 million to clean up a 1.5 million-cubic-foot disposal facility. The facility envisioned by this bill would be much larger. Moreover, TDH has a history of setting financial security requirements too low for the actual cleanup costs. Industry has demonstrated its dominance over this agency for 20 years, leading to contaminated aquifers and other environmental disasters. Instead of setting an unrealistically low minimum financial security requirement, the bill should require the license holder to provide financial security in an amount adequate to cover a worst-case scenario at the disposal facility.

The bill would establish a fast-track licensing process that would limit the opportunity to conduct thorough investigations of a proposed disposal site. The geologic fault line that ran just below the proposed Sierra Blanca facility was discovered only after thorough investigation and public involvement in the licensing process. The bill's narrow construction of public involvement in the licensing and review process would limit the public's ability to intervene. Proper evaluation of a proposed site requires adequate time to conduct the necessary analysis and research.

A private company could choose not to renew the disposal license in 20 or 30 years, when the state's two nuclear power plants will be decommissioned.

After earning a profit by disposing of mostly federal waste for the 15-year licensing period, a company could opt not to renew the license when the state would need to dispose of waste generated by its own nuclear plants.

Although proponents of a disposal facility suggest that low-level waste is stored in thousands of sites across Texas, the Bureau of Radiation Control estimates that only about 60 sites in the state store low-level radioactive waste. TDH regulates the safe storage of radioactive waste at those sites. About 96 percent of low-level radioactive waste in Texas is generated by the state's two nuclear power plants.

Creating a radioactive waste disposal facility would not improve homeland security. Trucks and trains crisscrossing the state with radioactive cargo en route to a disposal facility would provide easy targets for terrorists. Also, the bill would specify no security precautions to be implemented at the proposed facility. It would be preferable to store radioactive waste at Texas' nuclear power plants. These secure facilities are heavily guarded and already contain the vast majority of Texas' low-level radioactive waste, greatly reducing the need to put large shipments of waste on the state's roads and highways.

OTHER OPPONENTS SAY:

The bill would not establish a competitive licensing process. The narrow time frame for licensing would favor an applicant with an already established site, such as Waste Control Specialists, which operates a hazardous waste facility in Andrews County. Licenses would have to be submitted within a year after the bill took effect. Because of the data required in the application, a company would have to be collecting site-specific data now to be eligible for a license.

Some of the bill's provisions could conflict with federal requirements. For example, the U.S. Nuclear Regulatory Commission requires that a licensed low-level radioactive waste-disposal facility possess fee-simple ownership of the site, including the mineral rights. However, the bill would not require the license holder to own the mineral rights, although it would create a procedure by which the attorney general could acquire the rights through condemnation. Also, the bill would not require a license holder authorized to dispose of federal waste to transfer the title to the waste, land, and buildings to the federal government until the authorization expired. However, federal law requires such transfer prior to disposal.

NOTES:

Among other changes from HB 1567 as filed, the committee substitute would:

- allow an applicant to enter into a surface-use agreement and allow the attorney general to initiate condemnation proceedings;
- change the term of the license to 15 years from 35 years and allow 10-year renewals;
- change the deadline for notice for submitting license applications from October 1, 2003, to January 1, 2004;
- require TDH to select an application within 180 days of receiving the last timely filed application;
- require $20 million in financial security; and
- change the payment to the host county from 10 percent to 7.5 percent of gross receipts.

The fiscal note for CSHB 1567 estimates that the bill would generate a net gain of $500,000 in general revenue from application fees in fiscal 2004 and would require the addition of 12 full-time TDH employees.

The companion bill, SB 824 by Bivins, was considered in a public hearing by the Senate Natural Resources Committee on March 25 and left pending.

A related bill, HB 2589 by Burnam, was considered in a public hearing by House Environmental Regulation on March 25 and left pending. HB 2589 differs significantly from CSHB 1567 and would:

- create the Texas Low-Level Radioactive Waste Management Authority and specify that the authority was the only entity that could be issued a low-level radioactive waste license; and
- require the low-level radioactive waste facility to utilize the waste management concept of assured isolation, including isolating the waste in above-ground vaults from which the waste could be retrieved easily and monitoring individual waste structures and the nearby environment for leakage.

The 76th Legislature in 1999 considered several bills related to low-level radioactive waste disposal. HB 1910 by Chisum, as reported from the House Environmental Regulation Committee, would have authorized a facility to bury the waste underground or store it in above-ground containers with the

intent of long-term management or disposal. It would have prohibited issuing the license to a private entity. However, the prohibition against licensing a private entity was removed during House floor debate, and the bill died in the Senate Natural Resources Committee. HB 1171 by Chisum, as amended by the Senate, would have allowed TNRCC to issue a disposal license to a private entity, but the bill died late in the session when the House did not consider the Senate amendments. Ultimately, lawmakers enacted HB 2954 by Gray, which abolished the Low-Level Radioactive Waste Disposal Authority and transferred its powers to TNRCC.

In 2001, the 77th Legislature took up many of the same issues. SB 1541 by Duncan, as passed by the Senate, would have allowed TNRCC to issue a license to a private entity for a radioactive waste disposal or above-ground isolation facility. The license holder could have disposed of noncompact waste from the federal government. The House Environmental Regulation Committee's substitute version would have tightened restrictions on the license holder's acceptance of federal waste. However, SB 1541 died in the House Calendars Committee.