

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL
COMPACT CONSENT ACT

JULY 15, 1997.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 629]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 629) to grant the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 629 would grant the consent of Congress to the Texas Low-Level Radioactive Waste Disposal Compact. The Compact is com-

prised of the States of Texas, Maine, and Vermont, and was entered into in fulfillment of the States' responsibility under the Low-Level Radioactive Waste Policy Act (P.L. 96-573, as amended) to develop facilities for the disposal of low-level radioactive waste generated within their borders.

BACKGROUND AND NEED FOR LEGISLATION

Low-level radioactive waste, as distinguished from spent nuclear reactor fuel or high-level radioactive waste, emits a low level of radiation which decays relatively rapidly. The vast majority of low-level waste (97 percent) does not require special shielding for the protection of workers or the surrounding community. In addition to the low-level waste generated by nuclear utilities, such as discarded protective clothing, low-level radioactive waste includes medical waste produced by hospitals and materials produced by universities in the course of research work.

Congress' first effort to address the need for development of low-level waste facilities was the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96-573). The 1980 Act established the fundamental principles of Federal policy on nuclear waste disposal, the most important being that States are responsible for the disposal of low-level radioactive waste generated within their borders (other than certain Federal waste). The Federal government is responsible for the disposal of other radioactive waste, including high-level and transuranic waste. States are authorized to enter into compacts to provide for the establishment and operation of disposal facilities, and as requested by many States and the National Governors Association, compacts can restrict disposal facility access to only those States comprising the membership of the compact.

The desire to restrict access to disposal facilities was a driving force behind the adoption of the 1980 Act and the subsequent 1985 Low-Level Radioactive Waste Policy Amendments Act (P.L. 99-240). The States of Washington, Nevada, and South Carolina, which hosted the nation's only three low-level radioactive waste disposal facilities, expressed their unwillingness to continue accepting all of the country's low-level radioactive waste. Under the 1980 Act, these States could stop accepting out-of-compact waste after January 1, 1986.

By 1985, it was apparent that the 1986 cutoff date was impracticable, and the 1985 Act extended the cutoff date. Additionally, the 1985 Act established a series of penalty surcharges and denial of access for States failing to meet the legislation's milestones for progress toward the development of compact facilities. Finally, the 1985 Act granted the three States with existing disposal facilities the right to impose escalating surcharges on waste, and a cap on the volume of waste they would have to accept. The intent was to encourage States to more aggressively pursue the development of alternate disposal sites. Presently, nine interstate compacts have been granted Congressional consent, comprising a total of 41 States.

The Texas Low-Level Radioactive Waste Disposal Compact has been approved by the State legislatures and Governors of Texas, Maine, and Vermont. As an additional condition of its own participation in the Compact, the State of Maine approved the Compact

through a public referendum. The Compact specifies that the State of Texas will host the disposal facility. Like previously-approved compacts, the Texas Compact provides that no low-level radioactive waste may be exported from or imported to the regional facility except with approval of the governing commission of the Compact. This provision relies on the authority in Section 4 of the 1985 Act, which grants Congressionally-approved compacts the right to control access to their disposal facilities. While such consent is not necessary for the formation of interstate agreements, the absence of Congressional consent raises questions regarding the rights of compact members to exclude waste from non-member States. The consent granted by Congress continues only as long as a compact complies with the provisions of the Low-Level Radioactive Waste Policy Act.

HEARINGS

The Subcommittee on Energy and Power held a legislative hearing on H.R. 629, the Texas Low-Level Radioactive Waste Disposal Compact Consent Act, on May 13, 1997. The Subcommittee received testimony from the following witnesses: The Honorable Joe Barton, Member of Congress; The Honorable Gene Green, Member of Congress; The Honorable Henry Bonilla, Member of Congress; The Honorable Silvestre Reyes, Member of Congress; Mr. Roy Coffee, Director, Office of State-Federal Relations, State of Texas; Dr. Charles Williams, School of Medicine, Department of Anesthesiology, University of Texas Tech-El Paso; Ms. Teresa L. Todd, Presidio City Attorney; Mr. Steve Ward, Public Advocate, State of Maine; and Mr. Bill Addington, Save Sierra Blanca.

COMMITTEE CONSIDERATION

On May 13, 1997, the Subcommittee on Energy and Power met in open markup session and approved H.R. 629, the Texas Low-Level Radioactive Waste Disposal Compact Consent Act, for Full Committee consideration, without amendment, by a voice vote. On June 25, 1997, the Full Committee met in open markup session and ordered the bill H.R. 629 reported to the House, without amendment, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 629 reported. A motion by Mr. Bliley to order H.R. 629 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 629, the Texas Low-Level Radioactive Waste Disposal Compact Consent Act, would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 1997.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 629, the Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 629—Texas Low-Level Radioactive Waste Disposal Compact Consent Act

CBO estimates that enacting this bill would have no effect on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 629 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995, and would not impose any costs on state, local, or tribal governments.

H.R. 629 would give Congressional consent to a compact among the states of Texas, Maine, and Vermont governing the disposal of low-level radioactive waste. The bill includes the text of the agreement among the three states that establishes rights and responsibilities for disposing of low-level radioactive waste in Texas. Con-

gressional consent to such agreements among states is required by the Low-Level Radioactive Waste Disposal Act.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The section cites the Act as the “Texas Low-Level Radioactive Waste Disposal Compact Consent Act.”

Section 2. Congressional finding

This section provides that the purpose of the Texas Compact is to fulfill the member States’ obligations under the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.), which permits States to enter into interstate compacts to provide for the management and disposal of low-level radioactive waste generated within the Compact’s member States.

Section 3. Conditions of consent to compact

The section establishes the following conditions of the Compact: (1) that the Compact shall become effective on the date of enactment of the Act; (2) that Congressional consent is granted under the authority provided by the Low-Level Radioactive Waste Policy Act; and (3) that Congressional consent is conditioned upon the Compact commission’s compliance with all provisions of the Low-Level Radioactive Waste Policy Act. Should the Compact not comply with the requirements of the Federal statute, Congress has the authority to withdraw its consent of the Compact under the Low-Level Radioactive Waste Policy Act.

Section 4. Congressional Review

This section ensures that Congress may alter, amend, or repeal the Texas Low-Level Radioactive Waste Compact Consent Act after a ten-year period following the date of enactment of the Act, and at such intervals thereafter as provided in the Compact. The Compact language provides for such review every five years, consistent with the provisions of the Low-Level Radioactive Waste Policy Act.

Section 5. Texas Low-Level Radioactive Waste Disposal Compact

The section conveys the consent of Congress to the States of Texas, Maine and Vermont to enter into the Texas Low-Level Radioactive Waste Disposal Compact, and includes the text of the Compact agreement. The agreement, as approved by the State legislatures of Texas, Maine and Vermont, is summarized as follows:

Article I. Policy and Purpose. This article states that the policy and purpose of the Compact is to encourage the cooperative efforts of the three States to manage and dispose of low-level radioactive waste.

Article II. Definitions. The article provides definitions for terms used in the Compact agreement.

Article III. The Commission. This article establishes the eight-member Compact commission. Each party State is entitled to one voting member, while the host State is entitled to six voting members. The commission is established as a separate entity from the party States, and is given defined duties and responsibilities. Among these is a limitation on the amount of waste that non-host party States may contribute: shipments from non-host States may not exceed 20 percent of the volume estimated to be disposed by the host State over the 50-year span of the Compact, and total shipments from non-host party States may not exceed 20,000 cubic feet per year.

Article IV. Rights, Responsibilities, and Obligations of Party States. The article states that the host State shall have full control over the development, management, and operation of a facility for low-level waste disposal. The party States are required to dispose of their low-level radioactive waste at the Compact facility. The article establishes the duties of the host State, including compliance with applicable State and Federal statutes in operating the disposal facility, the establishment of disposal fees, and closure of the facility when necessary to protect public health and safety or to protect natural resources. It also establishes duties for the party States, including steps to reduce the overall volume of low-level waste, and the payment of community assistance projects in the host county in an amount equal to 10 percent of the amount required of each State for entry into the Compact.

Article V. Party State Contributions. Article V requires each party State to contribute a total of \$25 million to the host State's low-level waste fund for the purpose of assisting with the development, operation, and post-closure monitoring of the Compact facility.

Article VI. Prohibited Acts and Penalties. This article requires the Compact States to dispose of their low-level wastes at the Compact facility, and requires that no person may dispose of any waste within the party States unless generated within the party States.

It also provides for the imposition of penalties for violation of the article.

Article VII. Eligibility, Entry Into Effect; Congressional Consent; Withdrawal; Exclusion. This article establishes Texas, Maine, and Vermont as the initial party States to the Compact, and establishes procedures by which additional States may be considered for Compact membership and by which party States, including the host State, may withdraw from the Compact. Further, it states that the Compact shall take effect following enactment by the party States and consent of the Congress, and allows Congressional review of the Compact every five years after its effective date.

Article VIII. Construction and Severability. Article VIII ensures that non-host party States shall not be liable for harm or damage associated with the siting, operation, maintenance, or long-term care of the Compact facility. However, generators of low-level radioactive waste, transporters, owners, and operators of the Compact facility shall be liable for their actions under applicable law. The article also ensures the full regulatory authorities of the U.S. Nuclear Regulatory Commission and State authorities under the Atomic Energy Act (42 U.S.C. 2021), including the authority to levy fines and penalties for non-compliance, are preserved.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

