

BILL ANALYSIS

C.S.H.B. 1366
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, there is no provision to fund a dry cleaning pollution clean up program. No federal or state programs exist that are specifically related to the environmental impact of dry cleaners. It is impossible for small, family owned dry cleaners to afford the cost of private remediation. The voluntary compliance cost for most small business dry cleaners is greater than they can afford.

This bill adds Chapter 374, Dry Cleaner Environmental Response, to the Health and Safety Code and attempts to provide assistance to the dry cleaning industry in cleaning up chemical spills.

The purpose of the bill is to prevent pollution and move industry toward less polluting chemicals and pollution prevention in delivery of storage, use and handling of chemicals. The fund's floor is ten million dollars and the ceiling is twenty million dollars.

Twelve states have such programs. Kansas has the best of the twelve and this is a similar adaptation of the Kansas statute to meet Texas needs. The bill's intent is to, at no additional state cost, fully administer the program.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Sections 374.051, 374.052, 374.053, Health and Safety Code) and SECTION 3, Chapter 374, Health and Safety Code of this bill. Rulemaking authority is expressly granted to the Comptroller of Public Accounts in SECTION 1 (Section 374.104, Health and Safety Code) and SECTION 2, Chapter 374, Health and Safety Code of this bill.

ANALYSIS

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 374, Dry Cleaner Environmental Response.

Sec. 374.001 Definitions

This section provides definitions for: "Chlorinated dry cleaning solvent," "Commission," "Corrective action," "Corrective action plan," "Dry cleaning facility," "Dry cleaning solvent," "Dry cleaning unit," "Executive director," "Fund," "Owner," and "Release."

Sec. 374.002 Applicability Of Other Law

To the extent that this chapter is inconsistent or in conflict with Chapter 361 or other general law, this chapter prevails.

Sec. 374.003 Applicability To Governmental Bodies

This chapter does not apply to a governmental entity or a political subdivision of this state.

Sec. 374.004 Advisory Committee

Membership to the advisory committee consists of three representatives of the dry cleaning industry, one public representative of urban areas, and one public representative of rural areas. The advisory committee will review and comment on the methodology used to rank contaminated sites, review and comment on the report the commission will prepare each biennium, and assist in the development of rules to implement this chapter. A member of the committee serves at the will of the executive director.

Sec. 374.051 Commission Rules And Standards

The commission shall adopt rules to administer and enforce this chapter. Rules adopted under this section must be reasonably necessary to preserve natural resources and provide corrective action of contaminated releases. The rules will establish performance standards, requirements for the removal of dry cleaning solvents, criteria to be used in setting priorities for the expenditure of money from the fund, and criteria under which the level at which corrective action is considered complete.

Sec. 374.052 Facility Retrofitting

The commission will require dry cleaning facilities operating on or before January 1, 2004 to implement performance standards not later than January 1, 2006. The commission may exempt businesses on the basis of financial hardship with annual gross receipts of \$200,000 or less. This section expires January 1, 2007.

Sec. 374.053 Performance Standards For New Dry Cleaning Facilities

The commission will adopt performance standards for a new dry cleaning facility. Rules must allow for new technologies, require proper storage and disposal of wastes, require compliance with emissions standards, require dikes or other containment structures to be installed around dry cleaning units and storage areas and capable of containing a leak, spill or release. Require all diked floor surfaces to be made of the appropriate material and all chlorinated dry cleaning solvents be delivered by the appropriate means. Rules under this section shall ensure that wastewater or solvent is not discharged to a sanitary sewer, septic tank, or water of this state.

Sec. 374.054 Completion Criteria

Various factors will be considered in determining whether a corrective action is complete, such as individual site characteristics, state water quality standards, deviation from state water quality standards, and any additional factors that are relevant.

Sec. 374.055 Criteria For Administration Of Chapter

The commission shall deal with contamination from dry cleaning facilities by using money in the fund, use the fund as sites are discovered, consider interim or early corrective action, use innovative technology, and use the fund to address contamination from releases.

Sec. 374.056 Report To Governor And Legislature

A report will be submitted to the Governor and Legislature on or before December 1 of each even-numbered year regarding activity in the fund during the two previous fiscal years including money deposited to the fund and the sources, disbursements from the fund and the purposes of the disbursements and the extent of corrective action taken. The report will also include the ranking of sites on the date the report is made.

Sec. 374.101 Dry Cleaning Facility Release Fund

The dry cleaning facility release fund is an account in the general revenue fund. The fund consists under this chapter from proceeds from charges and fees, interest attributable to investment of the money, money recovered by the state and money received in the form of gifts, grants, reimbursements, or appropriations. The fund may be appropriated only to the commission including any administrative duty imposed under this chapter. Before September 1, 2005 the commission may not exceed 15 percent of the fund for administrative and start-up expenses. Beginning on September 1, 2005, the commission may not exceed

10 percent of the fund for administrative expenses.

Sec. 374.102 Registration; Fee; Posting

Each dry cleaning facility must register with the Commission annually along with a \$250.00 registration fee. The owner's registration number shall be posted in the public area of each dry cleaning facility. Fees paid under this section will be deposited to the fund.

Sec. 374.103 Environmental Remediation Charge; Disposition Of Proceeds

All receipts received for dry cleaning or laundering services are subject to an environmental remediation charge of 1.5 percent which will be paid to the Comptroller. Receipts that are exempt from the charge are: services performed through a coin-operated device, laundering without use of dry cleaning solvents of uniforms, linens, or other textiles for commercial use, or services exempt from the retail sales tax.

The comptroller may retain five percent of the charges collected for the purpose of covering costs incurred under this chapter. The rest of the charges will be credited to the fund. If the costs to administer the fund are less than the amount retained, the comptroller will return the unexpended balance to the fund on or before August 31 of that year.

Sec. 374.104 Fee On Purchase Of Dry Cleaning Solvent; Disposition Of Proceeds

A fee of \$5.00 per gallon is imposed on the purchase of dry cleaning solvent by a dry cleaning facility. The person that distributes the solvent shall pay the fee to the comptroller. The comptroller shall deposit all fees to the fund. This section does not apply to an owner who has never used the dry cleaning solvent perchloroethylene in a dry cleaning unit.

Sec. 374.105 Imposition Of Charge Dependent On Balance Of Fund

The environmental remediation charge is not required to be paid after July 1 of a calendar year if the unobligated principal balance exceeds \$20 million on April 1 of that year. The environmental remediation charge shall be reinstated effective July 1 of a calendar year if the unobligated principal balance of the fund is less than \$10 million on April 1 of that year. The commission will notify the comptroller of the unobligated balance of the fund no later than April 5 of each year. The comptroller shall notify persons that pay the fee if the charge is to be suspended or reinstated on the following July 1.

Sec. 374.151 Response To Release

A person may not intentionally allow a release. A person that is aware of a release shall contain and control the release and notify the commission of the release within 48 hours.

Sec. 374.152 Investigation And Assessment Of Release; Emergency Action

If a release poses a threat to human health or the environment, the commission will investigate and assess the contamination and take necessary action to ensure that human health or safety is not threatened by the release.

Sec. 374.153 Corrective Action

The commission shall take corrective action for a release from a dry cleaning facility that results in contamination, including contamination that may have moved off the dry cleaning facility. Corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost effective method. The commission shall operate, maintain, monitor releases, proper disposal of wastes, and pay reasonable costs for the corrective action.

Sec. 374.154 Ranking Of Contaminated Dry Cleaning Sites

The commission shall assign a rank for sites awaiting corrective action. The application for ranking must contain information and evidence required by commission rule to aid in ranking. The costs incurred by an applicant in collecting the information shall be credited against the deductible paid by the applicant. The commission will notify the applicant of their ranking on or before the 90th day after the application is received.

Sec. 374.155 Power To Modify Commission Rankings Or Postpone Corrective Actions

The commission may modify the ranked status or postpone temporarily the completion of a corrective action if it is necessary to make money available for action at a site with a higher ranking.

Sec. 374.156 Entry Onto Property

The commission may enter onto property to take corrective action if action is necessary to protect the public health or environment at reasonable times and on written notice to the owner. If consent is not granted to enter the property, the commission may issue an order directing compliance with the notice.

Sec. 374.201 Proportionate Share Of Liability

The commission may use money in the fund to pay for the proportionate share of the liability and determine relative liability of the fund for costs of corrective action. The commission shall issue an order establishing the percentage of liability.

Sec. 374.202 Owner Responsibility

The commission may hold an owner responsible for the costs of corrective action if they caused a release by operating improper practices, is in arrears for money owed under this chapter, obstructed the efforts of the commission, a material violation, or more than once violated commission rules.

Sec.374.203 Limitation On Use Of Fund For Corrective Action

In this section, "contaminated dry cleaning site" is defined. The commission may not use in excess of \$5 million from the fund for corrective action at a single contaminated dry cleaning site. This section lists limitations on the use of the fund. The applicant must pay a deductible of the first \$5,000 of corrective action costs.

Sec. 374.204 Limitation On Liability

The fund, the commission, the executive director, this state, or agents or employees of this state may not be held liable for loss of business, damages, or taking of property associated with any corrective action.

Sec. 374.205 Limitation On Use Of Fund For Third Parties

Money from the fund may not be used to compensate third parties for bodily injury or property damage caused by a release, other than property damage included in a corrective action plan.

Sec. 374.206 Use Of Other Sources Of Money

This chapter does not create a liability or responsibility to pay any corrective action costs from a source other than the fund or to take corrective action if the amount of money in the fund is not sufficient.

Sec. 374.207 Eligible Owner Exempt From Certain Claims

If a site is eligible to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law by or on behalf of this state or by any other person, except a political subdivision, to compel or seek recovery of corrective action.

Sec. 374.208 Unauthorized Payments

This section deals with the costs that the commission may pay or may not pay from the fund.

Sec. 374.251 Review of Orders And Decisions

A person affected by an order or decision by the commission may make a written request for a hearing. A person under this section is entitled to judicial review.

Sec. 374.252 Violations; Penalties

A person is subject to an administrative penalty under Section 7.0525, Water Code, if the person is

responsible for any of the violations stated in this section.

Sec. 374.253 Expiration

This chapter expires on September 1, 2021. A corrective action begun before the expiration date shall be completed with money from the fund to the extent possible. Any unobligated money in the fund after completion of all corrective actions shall be transferred to the general revenue fund.

SECTION 2. Subchapter C. Chapter 7, Water code is amended by adding:

Sec. 7.0525. Penalties For Violations Related To Certain Dry Cleaning Facilities.

The amount of the penalty for a violation of section 374.252, Health and Safety Code, may not exceed \$5,000 except violation of Section 374.252 (a)(1), Health and Safety Code, may not exceed \$1,000. In assessing an administrative penalty, the commission shall consider the factors under this section.

SECTION 3. Not later than December 1, 2003, the Texas Commission on Environmental Quality and the comptroller shall adopt rules, performance standards, or forms required for the implementation of this act.

The changes in law as added by this act, apply only to a cause of action that accrues on or after January 1, 2004, and before September 1, 2021.

SECTION 4. This act takes effect September 1, 2003 except as provided by this section.

Before January 1, 2005, the commission shall limit disbursements from the fund to those disbursements allowed by Section 374.101(d) as added by this Act.

Disbursements from the fund for corrective action, as added by this Act, may not begin before January 1, 2005.

Sections 374.056, 374.204, 374.207, and 374.252, as added by this Act, take effect January 1, 2004.

EFFECTIVE DATE

This Act takes effect September 1, 2003, except as provided in Section 4 of the bill.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1366 modifies the original version by the following:

SECTION 1

Sec. 374.001

The substitute adds the word retail to the definition of a “Dry cleaning facility”, deletes the definition of “Retailer”.

Sec. 374.003

The substitute adds an additional exemption to the Applicability to Governmental Bodies which is a political subdivision of this state.

Sec. 374.004

The substitute adds that the advisory committee will be composed of one public representative of urban areas and one public representative of rural areas.

Sec. 374.052

The substitute adds language where the commission by rule may exempt businesses on the basis of financial hardship for facility retrofitting.

Sec. 374.055

The substitute deletes language from the criteria for administration of chapter which discouraged other units of government from becoming involved in the contamination problems resulting from releases. C.S.H.B. 1366 deletes the language that the commission shall prevent the listing of sites where dry cleaning solvents are involved on the federal National Priorities List.

C.S.H.B. 1366 deletes the language may not seek out contaminated dry cleaning facility sites because of the existence of the fund or this chapter by the commission.

Sec. 374.101

The substitute adds language to clarify that the commission shall use money from the fund to pay for all expenses, including administrative duties, under this chapter. Language has also been added to clarify how much the commission may annually spend for administrative expenses from the fund. It also adds Section 403.095, Government Code, does not apply to money deposited to the fund.

Sec. 374.102

The substitute changes the registration fee to \$250.00.

Sec. 374.103

The substitute modifies Surcharge to Remediation Charge and deletes the use of the word gross in gross receipts. The charge shall be at a rate of 1.5 percent of all receipts. The substitute deletes the consumer shall pay the surcharge to the retailer. C.S.H.B. 1366 deletes the charge shall be collected in the same manner as the retail sales tax imposed under Chapter 151, Tax Code. Language has been inserted to clarify that the comptroller may retain five percent of the charges collected under this section for the costs incurred under this chapter. If the comptroller's costs are less than the amount retained, the comptroller shall deposit the unexpended balance to the fund.

Sec. 374.104

The substitute deletes the language on the purchase of a fraction of a gallon. The fee will be imposed on the purchase of all dry cleaning solvent, not just perchloroethylene as stated in the original bill. An exemption has been added to state that the fee does not apply to an owner who has never used the dry cleaning solvent perchloroethylene in a dry cleaning unit. The substitute removes the language in reference to fees collected in the same manner as the retail sales tax imposed under Chapter 151, Tax Code.

Sec. 374.105

The substitute changes surcharge and fees to charge. This section deletes the reference to fees imposed by Section 374.104.

Sec. 374.154

The substitute deletes the language, for not less than five years, on an owner of a dry cleaning facility who is eligible to apply for a site to be ranked. Language has been deleted on the commission shall keep a list on corrective actions taken before January 1, 2004.

Sec.374.202

The substitute deletes the language on purchasers of stock or indicia of ownership.

Sec. 374.203

The substitute adds the commission may use money from the fund if the owner applies for ranking under Section 374.154 and is not otherwise ineligible. The substitute deletes the language on reimbursement at a site after September 1, 2003 and before January 1, 2005. It also deletes the language on the limit of payment from the fund to an amount not to exceed three percent of the fund.

Sec. 374.207

The substitute adds that a political subdivision is eligible to make a claim against the owner to compel corrective action.

Sec. 374.252

The substitute adds the language under Section 7.0525, Water Code, a person is subject to an administrative penalty. Language has been deleted that imposed on a person a penalty not to exceed \$500 for a violation.

Sec. 374.253

The substitute adds this section for the expiration of this chapter and the fund. This section also adds any unobligated money remaining in the fund after the completion of all corrective actions shall be transferred to the general revenue fund to the credit of the commission or a successor agency.

SECTION 2

The substitute adds Section 2 to read: Subchapter C, Chapter 7, Water Code, is amended by adding Section 7.0525. This section provides the penalties for violations of Section 374.252. It also adds in addition to the factors prescribed by 7.053 in assessing an administrative penalty.

SECTION 3

Section 2 of the original bill is now Section 3 in the substitute and adds the date of September 1, 2021 to the language.

SECTION 4

Section 3 of the original bill is now Section 4 in the substitute. The substitute deletes language that the commission may not collect fees or deposit fees to the fund before January 1, 2004. Language is added to the substitute to clarify that before January 1, 2005 the commission shall limit disbursements from the fund as allowed by Section 374.101 (d), as added by this Act. The substitute adds Sections 374.204 and 374.207 take effect January 1, 2004.