

BILL ANALYSIS

H.B. 2875
By: Bonnen
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Innocent citizens and business owners, primarily small and mid-sized entities, have been indicted and paid criminal penalties as the result of prosecutors newly developed theory of “passive disposal”. This concept is premised upon dirt at a site having been contaminated at some time with a waste material. According to the prosecutors, state environmental laws should be construed liberally in this context to support charging of a criminal violation because dirt has been contaminated, even though there is no proof that the person charged had actual knowledge of or willfully caused the contamination. House Bill 2875 defines the wording “disposes of ” for purposes of criminal penalties imposed under the Water Code.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 2875 amends chapter 7.141 of the Water Code, by adding subdivision (2-a), which defines the meaning of “disposes of”. The definition of “disposes of” applies to certain types of waste that are emitted into the environment in any manner. The term does not include passive migration, continuous release, seepage, or other movement that occurs after the substance is initially disposed of and without human initiation or assistance.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.