

BILL ANALYSIS

C.S.H.B. 2376
By: Elkins
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2003, the 78th Texas Legislature passed House Bill No. 1366 which enacted provisions to create and fund a dry cleaner remediation program under the authority of the Texas Commission on Environmental Quality (TCEQ).

The purpose of House Bill No. 2376 is to clarify and modify the provisions of the Act that was passed in 2003.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 3, 4, 5, and 10 of this measure.

ANALYSIS

- SECTION 1. Amends Section 374.001(2), (6), and (7), Health and Safety Code, as follows:
- Clarifies the definition of "chlorinated dry cleaning solvent" to specifically include perchloroethylene.
- Clarifies the definition of "dry cleaning drop station" to include a statement that it must be in the North American Industry Classification System and to ensure that it includes only those business whose primary business is to act as a collection point.
- Clarifies the definition of "dry cleaning facility" to include a statement that it must be in the North American Industry Classification System.
- SECTION 2. Amends Section 374.004, Health and Safety Code, by amending Subsection (b), and adding Subsection (d), as follows:
- Modifies that the advisory committee will help implement, administer, and enforce the rules of this chapter.
- Provides that members of the advisory committee will not be paid, but can be reimbursed for their travel expenses.
- SECTION 3. Amends Sections 374.051, Health and Safety Code, as follows:
- Modifies that the advisory committee will help in the adoption of rules necessary to administer and enforce this chapter.
- Clarifies that the TCEQ is required to adopt rules regarding the removal of "chlorinated" dry cleaning solvents, instead of just "dry cleaning solvents."

- SECTION 4. Amends Section 374.052(b), Health and Safety Code, as follows:
- Requires certain small businesses to retrofit not later than 2015.
- SECTION 5. Amends Sections 374.053(c) and (d), Health and Safety Code, as follows:
- Mandates secondary containment for all new or replaced dry cleaning units.
- Clarifies that certain requirements regarding rules adopted by the TCEQ concerning cleaning solvents is intended to refer to "chlorinated" dry cleaning solvents, instead of just "dry cleaning solvents."
- SECTION 6. Amends Sections 374.054(a) and (b), Health and Safety Code, as follows:
- Deletes a provision relating to the factors that the TCEQ should consider when a corrective action is complete to ensure consistency across programs.
- Makes conforming changes.
- SECTION 7. Amends Section 374.101 (b) and (d), Health and Safety Code, as follows:
- Modifies and authorizes the TCEQ to spend annually for administrative expenses not to exceed 15% of the fund.
- SECTION 8. Amends Section 374.102, Subsections (b) and (d) and adding Subsection (f) Health and Safety Code, regarding dry cleaning registration fees, as follows:
- Authorizes quarterly registration fee payments if arrangements have been made with the TCEQ.
- Requires varied annual fees for certain dry cleaning facilities, as follows:
- A fee of \$2,500 for a facility with gross annual receipts of more than \$150,000.
 - A fee of \$250 for a facility with gross annual receipts of \$150,000 or less.
 - A fee of \$250 for a facility that is designated as nonparticipating.
- A dry cleaning facility that depends entirely on revenue collected from their drop station or stations shall be determined by the gross annual receipts of their drop station or stations.
- Requires varied annual fees for certain dry cleaning drop stations, as follows:
- A fee of \$750 for a drop station with gross annual receipts of more than \$150,000.
 - A fee of \$250 for a drop station with gross annual receipts of \$150,000 or less.
 - A fee of \$250 for a drop station that is designated as nonparticipating.
- Requires owners of drop stations (along with dry cleaning facilities) to post their TCEQ registration number in a public place.

Requires the TCEQ to verify with the comptroller that the owner of a dry cleaning facility or drop station is in good standing with the state and has accurately reported its gross annual receipts prior to issuing a registration.

SECTION 9. Amends Section 374.103, Subsections (a) and (b), and adding Subsection (a-1), Health and Safety Code, as follows:

Requiring distributors of solvents to register with the TCEQ.

Authorizes the distributor of solvents to withhold two percent of the fees collected on the sale of solvents for administrative expenses.

Exempts non-participating dry cleaning facilities from paying the per gallon fees when they purchase solvents.

Removes provisions exempting certain owners who have never used perchloroethylene or bought the solvent carbon dioxide from paying the per gallon fees when they purchase solvents.

SECTION 10. Amends Section 374.104, (a)-(c), (e), and (f), Health and Safety Code, as follows:

Authorizes the owners of drop stations (along with dry cleaning facilities) not to participate in fund benefits.

Extends the option not to participate in the fund to December 31, 2005 (instead of January 1, 2004).

Prohibits an owner from filing an option not to participate after September 1, 2005 unless they were the owner on January 1, 2004, and were eligible to file before January 1, 2004, and inadvertently failed to file.

Clarifies the requirements for being designated as non-participating for a dry cleaning facility or drop station.

Requires an owner to demonstrate that perchloroethylene has never been used at that location in order to be determined non-participating.

Requires an owner to obtain written consent of the person who owns the property in order to be determined non-participating.

Includes "dry cleaning facility" and "drop station" (instead of just facility) in the provision regarding the consequences of becoming designated as non-participating.

SECTION 11. Amends Section 374.151, Health and Safety Code, as follows:

Prohibits a person from knowingly allowing a release of solvent.

Removes the duration requirement regarding solvent releases (24-hour period) that requires a person to make certain notifications.

Requires notice to the TCEQ within 24 hours (instead of 48 hours) of a release of solvent to be consistent with the Water Code.

SECTION 12. Amends Sections 374.154(b) and (c), Health and Safety Code, as follows:

Includes "drop station" (along with dry cleaning facility) in the provision regarding the ranking of contaminated dry cleaning sites.

Includes a person who is the owner of the property on which the facility or drop station is or was located (deletes ownership of not less than five years).

Includes a person who was the preceding owner of the property on which the facility or station is or was located if the person entered into an agreement with the current owner associated with the sale of the real property to be responsible for any costs associated with the cleanup.

Includes that the application for ranking must include proof that the owner of the property has been notified.

SECTION 13. Amends Sections 374.203(c) and (d), Health and Safety Code, as follows:

Makes an exception for emergency actions to the requirements of the use of the fund for corrective action.

Deletes the provision requiring that a contaminated site be under the same ownership for five years in order to receive benefits from the fund for corrective action.

Includes "drop station" (along with "dry cleaning facility") in the provision regarding a non-refundable deductible that an owner must pay to receive corrective action.

SECTION 14. Amends Section 374.251, Health and Safety Code, as follows:

Removes "decision" and refers instead to "final order" in the section regarding TCEQ administrative actions.

Adds if the state prevails in the litigation, the state is entitled to reasonable attorney's fees and reasonable costs to prepare for litigation.

SECTION 15. Amends Section 374.252, Health and Safety Code, as follows:

Includes "drop station" (along with "dry cleaning facility") in provisions regarding violations and penalties.

Authorizes a penalty of up to \$50 per day if a registration fee is not paid on or before the 30th day after the date the fee is due.

SECTION 16. Amends Section 374.253(c), Health and Safety Code, as follows:

Authorizes the TCEQ to continue to pay for a corrective action after the sunset of the chapter if funds are available.

SECTION 17. Amends Section 7.0525(b), Water Code, as follows:

Changes the fine to \$10,000 for the violation of fraud under this chapter.

SECTION 18. Repeals Sections 374.001(1), 374.052(c), 374.105(c), 374.156, and 374.201, Health and Safety Code.

SECTION 19. Transition Clauses.

SECTION 20. Effective Date.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

- SECTION 1. The Substitute clarifies several definitions in Chapter 374, Health and Safety Code.
- SECTION 2. The Substitute includes the original SECTION 1 language and adds language that modifies that the advisory committee will be more involved in the rulemaking process (instead of just helping to implement, they now will help implement, administer, and enforce).
- SECTION 3. The Substitute includes the original SECTION 2 language and modifies that the advisory committee will help in the adoption of rules.
- SECTION 4. The Substitute requires certain small businesses to retrofit.
- SECTION 5. The Substitute includes the original SECTION 3 language and adds language mandating secondary containment for all new or replaced dry cleaning units.
- SECTION 6. The Substitute deletes a provision relating to the factors that the TCEQ should consider when a corrective action is complete.
- SECTION 7. The Substitute authorizes TCEQ to spend annually for administrative expenses up to 15% of the fund and deletes provisions separating the percentage that may be spent authorized for early versus later years.
- SECTION 8. The Substitute includes language from the original SECTION 4 and lists the registration fees for dry cleaning facilities and drop stations and requires the TCEQ to make certain verifications with the comptroller prior to the issuance of a registration.
- SECTION 9. The Substitute includes original SECTION 5 language and language requiring distributors of solvents to register with the TCEQ.
- SECTION 10. The Substitute includes the original SECTION 6 language and adds requirements and consequences of being designated as nonparticipating.
- SECTION 11. The Substitute prohibits a person from knowingly allowing a release of solvent and removes the duration requirement regarding solvent releases (24 hour period) that requires a person to contain and control the release and requires notice to the TCEQ within 24 hours (instead of 48 hours) of a release.
- SECTION 12. The Substitute includes the original SECTION 7 language and adds a new group of people eligible to be ranked for clean-up.
- SECTION 13. The Substitute includes the original SECTION 8 language and requires a non-refundable deductible of \$5,000 for corrective action and deletes a provision requiring the property to be under the same ownership for 5 years and makes an exception for emergency actions.
- SECTION 14. The Substitute removes "decision" and refers instead to "final order" in the section regarding TCEQ administrative actions and adds the state is entitled to recover reasonable expenses if the state prevails in an appeal.

- SECTION 15. The Substitute includes the original SECTION 9 language and adds a penalty provision for failure to pay a registration fee.
- SECTION 16. The Substitute authorizes the TCEQ to continue to pay for projects after the sunset of the chapter if funds are available.
- SECTION 17. The Substitute changes the fine to \$10,000 for the violation of fraud under this chapter.
- SECTION 18. The Substitute includes the original SECTION 10 language and repeals Sections 374.052(c), 374.156, and 374.201.
- SECTION 19. The Substitute includes the original SECTION 11 language but it clarifies the unintended consequences of the fees for a drop station in the original HB 1366 (78R) so those fees which were payable before September 1, 2005 are payable not later than October 1, 2005 and states the corrected fee schedule.
- SECTION 20. The Substitute includes the original SECTION 12 language.