

AN ACT

relating to the authority of a county to provide hazardous materials services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 353 to read as follows:

CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and

1 Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

2 (C) the federal Toxic Substances Control Act (15
3 U.S.C. Section 2601 et seq.);

4 (D) the federal Hazardous Materials
5 Transportation Act (49 U.S.C. Section 5101 et seq.); or

6 (E) Chapter 361, Health and Safety Code.

7 Sec. 353.002. APPLICABILITY. This chapter applies to an
8 incident involving hazardous material that has been leaked,
9 spilled, released, or abandoned on any property.

10 Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county
11 may provide hazardous materials services, including a response to
12 an incident involving hazardous material that has been leaked,
13 spilled, released, or abandoned, if:

14 (1) the county first provides reasonable notice to a
15 concerned party regarding the need for the hazardous materials
16 services so that the concerned party has a reasonable opportunity
17 to respond to the incident involving hazardous material; and

18 (2) the concerned party fails to respond or fails to
19 respond in a timely and effective manner to the incident.

20 (b) A county may provide limited control and containment
21 measures that are necessary to protect human health and the
22 environment without first complying with the requirements of
23 Subsection (a) if the county is the first entity to arrive at a site
24 where an incident involving hazardous material has occurred that is
25 prepared to take action in response to the incident.

26 (c) If the hazardous material is natural gas released from
27 an underground facility as defined by Section 251.002, Utilities

1 Code, the county:

2 (1) must comply with the requirements of Section
3 251.159, Utilities Code; and

4 (2) may not operate any equipment or other controls or
5 devices at the underground facility without the express permission
6 of the operator of the facility.

7 Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS
8 SERVICE; EXCEPTION. (a) A county, or a person authorized by
9 contract on the county's behalf, may charge a reasonable fee,
10 including a fee to offset the cost of providing control and
11 containment measures under Section 353.003(b), to a concerned party
12 for responding to a hazardous materials service call.

13 (b) A county, or a person authorized by contract on the
14 county's behalf, may charge a fee for providing hazardous materials
15 services under Section 353.003(a) only if the county has complied
16 with the requirements of that subsection. A concerned party is not
17 liable for a fee associated with the county's hazardous materials
18 services under Section 353.003(a) or a fee to offset the cost of
19 providing control and containment measures under Section
20 353.003(b) if the county provides hazardous materials services
21 under Section 353.003(a) and the county does not provide notice as
22 required by Section 353.003(a)(1).

23 (c) An individual who is a concerned party does not have to
24 pay a fee under this section if:

25 (1) the individual is not involved in the possession,
26 ownership, or transportation of the hazardous material as the
27 employee, agent, or servant of another person;

1 (2) the individual is involved solely for private,
2 noncommercial purposes related to the individual's own property and
3 the individual receives no compensation for any services involving
4 the hazardous materials; and

5 (3) the hazardous materials possessed, owned, or being
6 transported by the individual are in forms, quantities, and
7 containers ordinarily available for sale as consumer products to
8 members of the general public.

9 Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This
10 chapter does not apply to hazardous materials owned or possessed by
11 a governmental entity.

12 SECTION 2. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 580 was passed by the House on May 13, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 580 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 580 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 580

I certify that H.B. No. 580 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 580 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor