

SUBJECT: Recovery of attorney's fees for claims from hazardous waste abandonment

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — B. Cook, Strama, Madden, Raymond, Talton
0 nays
4 absent — P. King, Martinez Fischer, Miller, Woolley

WITNESSES: For — Gary Newton, Texas Disposal Systems Landfill, Inc. (*Registered, but did not testify*: Kinnan Golemon, Texas Disposal Systems; Jim Grace, CenterPoint Energy, Inc.; Ken Kramer, Lone Star Chapter of the Sierra Club; Gary Dunean Martin, Texas County Attorney's Office)
Against — None

BACKGROUND: Under Civil Practice and Remedies Code, sec. 38.001, an individual may recover reasonable attorney's fees for claims on rendered services, performed labor, furnished material, freight or express overcharges, lost or damaged freight or express, killed or injured stock, a sworn account, or an oral or written contract.

DIGEST: CSHB 3071 would amend Civil Practice and Remedies Code, sec. 38.001 to allow a person to recover reasonable attorney's fees from an individual or corporation if the claim was for management of hazardous waste intentionally abandoned on the person's property by another.

The bill would apply to a claim for hazardous waste that was abandoned or that remained abandoned on a property on or after the effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY: Intentional hazardous waste abandonment poses a severe public health risk and environmental damage. Those involved in hazardous waste management should be held to high standards. In enabling landowners to

recover litigation costs for the intentional abandonment of hazardous waste, the bill would promote responsible disposal of hazardous waste by the responsible party.

The most significant cost to a landowner seeking hazardous waste removal may be attorney's fees required to legally mandate action by the responsible party. As a result, a landowner may not be able to afford the cost of filing a civil claim for hazardous waste removal by the responsible party. The bill would enable a landowner to recover attorney's fees, thereby reducing the expenses for those demanding responsible hazardous waste management.

Under current law, the government may not always be relied upon to enforce standards for hazardous waste management. The Texas Commission on Environmental Quality sometimes avoids involvement in hazardous waste disputes, claiming the issue should be resolved in court. In those circumstances, holding individuals or corporations responsible for hazardous waste removal requires private-party involvement. By ensuring that the cost of private-party involvement could be recovered, CSHB 3071 would demonstrate that Texas was committed to responsible practices in hazardous waste management.

When a landowner files a claim for hazardous waste abandonment, the responsible party may intentionally try to lengthen the legal process. This strategy is designed to increase attorney's fees and thereby end the landowner's claim for hazardous waste removal. CSHB 3071 would limit the responsible party's ability to employ this tactic. Moreover, enormous liabilities under the U.S. Environmental Protection Agency's Superfund Program can result from a landowner's attempt to remove hazardous waste. The bill would provide another option for the landowner to employ in hazardous waste removal.

OPPONENTS
SAY:

Even this limited addition to the list of claims allowing recovery of attorney's fees could provide opportunities for abuses of the legal process if landowners were assured of their ability to recover attorney's fees in civil lawsuits concerning hazardous waste abandonment.