

BILL ANALYSIS

Senate Research Center

H.B. 3220
By: Elkins (Jackson)
Natural Resources
5/16/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Conflicts often arise between property owners and dry cleaning facility owners who lease the property over the cost of remediating hazardous wastes resulting from expended chemicals used by dry cleaning facilities. In the event of such conflict, each side hires its own experts to determine the extent and cost of the clean-up, which is an expensive and time-consuming process, inevitably delaying the clean-up process.

H.B. 3220 provides for uniform environmental regulation and remediation of dry cleaning facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 374.102, Health and Safety Code, to read as follows:

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING.

SECTION 2. Amends Subchapter C, Chapter 374, Health and Safety Code, by adding Sections 374.1022 and 374.1023, as follows:

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) Provides that a person who owns real property on which a dry cleaning facility or drop station is or was located, or the preceding owner of such property who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter (Dry Cleaner Environmental Response), to participate in the fund benefits by registering as provided by this section.

(b) Requires a person described by Subsection (a), in order to participate in fund benefits, to register with the Texas Commission on Environmental Quality (TCEQ) on or before December 31, 2007, using a form prescribed by TCEQ, to include on such a form information identifying the person as a property owner or a preceding property owner, and pay an annual registration fee of \$1,500.

(c) Authorizes a person described by Subsection (a) to participate in fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). Requires a person registering after that date to pay all past annual registration fees and a late fee of \$100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

(d) Authorizes the annual registration fee to be divided into quarterly payments due over the year on dates established by TCEQ.

Sec. 374.1023. LIEN. (a) Provides that a lien is imposed, in addition to all other remedies available under other law, against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 372.1022 that is due while the corrective action is ongoing. Provides that the amount of the lien is the sum of the costs of the action and the fees due but not paid during the period of corrective action.

(b) Provides that the lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. Provides that the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date, for the purpose of determining rights of all affected parties. Provides that the lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. Requires the executive director of TCEQ (executive director) to determine whether to prepare an affidavit. Sets forth certain actions or considerations to be taken by the executive director in determining whether to prepare an affidavit or whether a lien is satisfied.

(c) Requires an authorized representative of TCEQ to execute the affidavit. Requires the affidavit to show the names and addresses of the persons liable for the corrective action costs and registration fees, a description of the real property that is subject to or affected by the corrective action, and the amount of corrective action costs and registration fees and the balance due.

(d) Requires the county clerk to record the affidavit in records kept for that purpose and to index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) Requires TCEQ to record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) Authorizes the foreclosure of the lien only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) Provides that the lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring said property or encumbrance had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) Authorizes the owner of the real property affected by the lien, if a lien is fixed or attempted to be fixed as provided by this section, to file a bond to indemnify against the lien. Requires the bond to be filed with the county clerk of the county in which the real property subject to the lien is located. Requires an action to establish, enforce, or foreclose any lien or claim of lien covered by the bond to be brought not later than the 30th day after the date of service of notice of the bond. Sets forth certain requirements of the bond.

(i) Requires the county clerk after the bond is filed, to issue notice of the bond to the named obligee. Requires a copy of the bond to be attached to the notice. Authorizes the notice to be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. Requires the original notice to be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. Requires the county clerk to

record the bond notice and return in records kept for that purpose. Authorizes a purchaser or lender, in acquiring an interest in real property, to rely on and is absolutely protected by the record of the bond, notice, and return.

(j) Authorizes TCEQ to sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. Entitles TCEQ to recover reasonable attorney's fees if TCEQ recovers in a suit on the lien or on the bond.

SECTION 3. Amends Section 374.103(a), Health and Safety Code, to provide, except as provided by Subsection (b) and Section 374.104(d), a fee of \$20 per gallon, rather than \$15 per gallon, is imposed on the purchase of the dry cleaning solvent perchloroethylene and \$3 per gallon, rather than \$5 per gallon, on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility.

SECTION 4. Amends Section 374.104, Health and Safety Code, by amending Subsection (b-1) and adding Subsection (g), as follows:

(b-1) Entitles an owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) to a refund of registration fees, rather than credit against future fees, paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station. Makes a nonsubstantive change.

(g) Authorizes a person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section, as provided by this subsection, to retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. Requires a person to whom this section applies to provide to TCEQ the written consent of the property owner at the new location, and continue to comply with the other requirements of this section.

SECTION 5. Amends Subchapter D, Chapter 374, Health and Safety Code, by adding Section 374.1535, as follows:

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION. (a) Prohibits perchloroethylene from being used at a site if TCEQ has completed corrective action at a dry cleaning site.

(b) Provides that a site is not eligible for future corrective action using money from the fund if the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site.

SECTION 6. Amends Sections 374.154(b) and (c), Health and Safety Code, as follows:

(b) Provides that certain persons are eligible to apply for a site to be ranked under Subsection (a). Deletes existing text relating to a certain person who is an owner or a previous owner.

(c) Requires an application to include proof that the owner of the real property and any lessee have been notified of the application is a person described by Section 374.1022(a)(2), rather than Subsection (b)(3).

SECTION 7. Amends Section 374.207, Health and Safety Code, as follows:

Sec. 374.207. New heading: ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. Prohibits an administrative or judicial claim, if an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, from being made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release. Makes a nonsubstantive change.

SECTION 8. Requires TCEQ to provide the comptroller of public accounts with a list of persons eligible for a refund under Section 374.104(b-1), Health and Safety Code, as amended by this Act not later than November 30, 2007, and requires the comptroller to pay each refund not later than December 31, 2007. Provides that the amount of a refund paid to a person under this section is the current credit balance for that person at the time the list is completed.

SECTION 9. Effective date: upon passage or September 1, 2007.