

## **BILL ANALYSIS**

Senate Research Center

H.B. 2376  
By: Elkins (Jackson)  
Natural Resources  
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Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The 78th Legislature, Regular Session, 2003, passed H.B. 1366, addressing the environmental regulation and remediation of dry cleaning facilities.

H.B. 2376 clarifies some language in the statute and modifies the Dry Cleaner Remediation Program (DCRP). The bill uses input received from the Texas Commission on Environmental Quality, dry cleaners, property owners, business owners, and environmental consultants to affect certain changes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality is modified in SECTION 3 (Section 374.051, Health and Safety Code), SECTION 4 (Section 374.052, Health and Safety Code) and SECTION 5 (Section 374.053, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 374.001, Health and Safety Code, by amending Subdivisions (2), (6), and (7), to redefine "chlorinated dry cleaning solvent," "dry cleaning drop station," and "dry cleaning facility."

SECTION 2. Amends Section 374.004, Health and Safety Code, by amending Subsection (b) and adding Subsection (d), as follows:

(a) Requires the advisory committee to assist in the ongoing development of rules to implement, administer, and enforce this chapter.

(d) Provides that a member of the advisory committee serves without compensation but is entitled to be reimbursed by the Texas Commission on Environmental Quality (TCEQ) for actual and necessary travel expenses related to the performance of advisory committee duties.

SECTION 3. Amends Section 374.051, Health and Safety Code, as follows:

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) Requires TCEQ, with the assistance of the advisory committee, to adopt rules necessary to administer and enforce this chapter. Requires rules adopted under this section to be reasonably necessary to provide for prompt and appropriate corrective action of releases from dry cleaning facilities.

(b) Requires TCEQ to adopt rules that establish requirements for the removal of chlorinated dry cleaning solvents and wastes from dry cleaning facilities that are to be closed by the owner to prevent future releases. Makes a conforming change.

SECTION 4. Amends Section 374.052(b), Health and Safety Code, to require TCEQ by rule to require businesses operating on or before January 1, 2004, whose annual gross receipts are \$150,000 or less to implement the performance standards adopted under Sections 374.053(c), (4), and (5) not later than January 1, 2015. Deletes existing text relating to TCEQ's ability to exempt certain businesses from the requirements of Subsection (a).

SECTION 5. Amends Sections 374.053(c) and (d), Health and Safety Code, as follows:

(c) Requires rules adopted under this section to require secondary containment for all new or replaced dry cleaning units, regardless of the solvent used. Makes conforming changes.

(d) Requires rules adopted under this section to ensure that wastewater from a dry cleaning unit using chlorinated dry cleaning solvent or discharge of chlorinated dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

SECTION 6. Amends Section 374.054, Health and Safety Code, to delete existing text relating to deviations from state water quality standards.

SECTION 7. Amends Sections 374.101(b) and (d), Health and Safety Code, as follows:

(b) Provides that the Dry Cleaning Facility Release Fund (fund) consists of money from money recovered by the state under this chapter, including any money paid as penalties, rather than civil penalties. Makes nonsubstantive changes.

(d) Deletes existing text authorizing TCEQ to spend from the fund for certain expenses.

SECTION 8. Amends Section 374.102, Health and Safety Code, by amending Subsections (b) and (d) and by adding Subsection (f), as follows:

(b) Provides that an annual registration fee, the total amount of which is authorized to be divide into quarterly payments and billed on dates established by TCEQ, is assessed in a certain amended manner.

(d) Requires the owner of a dry cleaning facility or drop station to post the owner's registration number, in a manner prescribed by TCEQ, in the public area of each of the owner's operating dry cleaning facilities or drop stations.

(f) Requires TCEQ, for each registration application, to request that the comptroller of public accounts (comptroller) verify whether the owner submitting the registration application is in good standing with the state and whether the owner's selection on the registration application of the gross annual receipts classification for the dry cleaning facility or drop station agrees with information reported to the comptroller for the same tax or reporting year. Requires the comptroller, not later than the third business day after the comptroller receives the verification request, based in part on information supplied by TCEQ, to report to TCEQ the owner's standing and whether the owner's application information agrees with the comptroller's information.

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

(a) Requires the person who distributes the solvent to collect the fees and to pay to TCEQ the amount due, in accordance with Subsection (a-1).

(a-1) Requires a person who distributes dry cleaning solvent to register as a distributor with TCEQ. Entitles a registered distributor to withhold one percent of the amount of the fee imposed by Subsection (a) for the distributor's administrative expenses if the distributor pays the remaining amount to TCEQ not later than the date prescribed by the commission.

(b) Provides that Subsection (a) does not apply to a dry cleaning facility designated as nonparticipating under Section 374.104.

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

(a) Authorizes the owner of a dry cleaning facility or drop station to file with TCEQ an option for the facility or drop station not to participate in fund benefits. Makes conforming changes.

(b) Requires an option not to participate to be filed on or before February 28, 2006, rather than January 1, 2004. Prohibits an owner from filing an option not to participate after September 1, 2005, unless the owner meets certain criteria.

(c) Requires TCEQ to designate a dry cleaning facility or drop station as nonparticipating if the owner demonstrates, at the owner's expense and in accordance with TCEQ rules, that perchloroethylene has never been used at that location and the owner obtains the written consent of the person who owns the real property on which the dry cleaning facility or drop station is located. Makes conforming changes.

(e) and (f) Make conforming changes.

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

Sec. 374.151. RESPONSE TO RELEASE. (a) Prohibits a person from knowingly allowing a release.

(b) Deletes existing text specifying a 24-hour time period for taking the actions described under this subsection.

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

(b) Provides that a person who was the preceding owner of the real property on which the dry cleaning facility or drop 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 the current owner that requires the person to be responsible for any costs associated with the clean up of contamination covered under this chapter is eligible to apply for a site to be ranked under Subsection (a). Makes conforming changes.

(c) Requires, if the applicant for ranking is a person described by Subsection (b)(3), the applicant to include proof that the owner of the real property and any lessee have been notified of the application. Makes conforming changes.

SECTION 13. Amends Section 374.202, Health and Safety Code, by adding Subsection (c), as follows:

(c) Authorizes TCEQ, or the attorney general at the request of the commission, to bring a civil action to recover any amounts owed to the commission under this section. Authorizes TCEQ or attorney general, as applicable, may recover court costs, the costs of preparing for litigation, and reasonable attorney's fees incurred in an action brought under this section. An owner is jointly and severally liable with any other defendant for the entire amount of costs.

SECTION 14. Amends Sections 374.203(c) and (d), Health and Safety Code, as follows:

(c) Prohibits TCEQ, except for dry cleaning sites that require emergency action under Section 374.152, from using money from the fund for corrective action at a contaminated dry cleaning site unless an eligible person applies for the ranking under Section 374.154 and is not otherwise ineligible for corrective action under this chapter. Deletes existing text relating to the ownership of real property providing an exception to the prohibition on TCEQ's use of funds.

(c) Makes conforming changes.

SECTION 15. Amends Section 374.251, Health and Safety Code, as follows:

Sec. 374.251. New heading: REVIEW OF ORDERS. (a) Authorizes a person affected by an order of TCEQ under this chapter, on or before the 15th day after the date of service of the order, to make a written request for a hearing.

(b) Entitles the state, if the state prevails in an appeal filed under this subsection, to recover reasonable expenses incurred in obtaining the judgment, including reasonable attorney's fees, costs involved in preparing for the litigation, and witness fees.

SECTION 16. Amends Section 374.252, Health and Safety Code, as follows:

Sec. 374.252. VIOLATIONS; PENALTIES. (a) Creates this subsection from existing text and makes a conforming change.

(b) Authorizes TCEQ, if a registration fee is not paid on or before the 30th day after the date the fee is due, to assess a penalty not to exceed \$50 per day for each day the fee is not paid.

(c) Authorizes TCEQ to assess a penalty not to exceed \$50 per day for each day the application is not filed if a registration application for an operating dry cleaning facility or drop station is not filed with TCEQ on or before the 30th day after the date the application is due.

(d) Authorizes TCEQ to use normal TCEQ procedures for the collection of penalties and interest on a penalty imposed under this section.

SECTION 17. Amends Section 374.253(c), Health and Safety Code, to authorize TCEQ to continue a corrective action that has not progressed beyond the investigative or planning stage after September 1, 2021, to the extent money from the fund is available. Deletes existing text prohibiting the payment of certain costs with money from the fund.

SECTION 18. Amends Section 7.0525(b), Water Code, to prohibit the amount of the penalty for a violation of Section 374.252(a)(3), Health and Safety Code, and from exceeding \$10,000.

SECTION 19. Repealer: Sections 374.001(1) (defining "carbon dioxide facility"), 374.052(c) (relating to rules adopted under this section and what they must require), 374.105 (New Dry Cleaning Facility Bond; Exception), 374.156 (Entry Onto Property), and 374.201 (Proportionate Share of Liability), Health and Safety Code.

SECTION 20. (a) Makes application of the changes in this law affecting registration fees for a dry cleaning facility as that term is defined by Section 374.001, Health and Safety Code, as amended by this Act, under Sections 374.102 and 374.252, Health and Safety Code, as amended by this Act, prospective.

(b) Provides that the changes in law affecting registration fees for a dry cleaning drop station as that term is defined by Section 374.001, Health and Safety Code, as amended by this Act, apply only to a registration fee that becomes payable on or after September 1, 2005.

(c) Provides that, notwithstanding Section 374.102, Health and Safety Code, as added by Chapter 540, Acts of the 78th Legislature, Regular Session, 2003, a registration fee that was payable before September 1, 2005, for a dry cleaning drop station as that term is defined by Section 374.001, Health and Safety Code, as amended by this Act, is payable not later than October 1, 2005, in the amount of \$125 for each dry cleaning drop station that is owned by the owner of a dry cleaning facility that was registered and designated as nonparticipating under Section 374.104, Health and Safety Code, before the effective date of this Act.

(d) Makes application of the change in law affecting fees collected under Section 374.103, Health and Safety Code, as amended by this Act, prospective.

(e) Makes application of the changes in law regarding allowing a release and notifying the TCEQ of a release under Section 374.151, Health and Safety Code, as amended by this Act, prospective.

(f) Requires, on or before February 28, 2006, the owner of a dry cleaning facility that filed an option not to participate under Section 374.104, Health and Safety Code, before the effective date of this Act, to comply with Subsection (c)(3) of that section, as added by this Act, to maintain nonparticipating status.

SECTION 21. Effective date: September 1, 2005.