

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 2776  
By: Jackson (Brown)  
Natural Resources  
5-15-97  
Committee Report (Substituted)

### **DIGEST**

The federal superfund program was established to clean up abandoned hazardous waste sites that pose an imminent threat to public health and safety or the environment. The state superfund program was created to address hazardous waste sites that pose a threat, but less severe than federal sites. The state program is funded by fees on the disposal of hazardous waste, the purchase of lead acid batteries, and the purchase of automotive oil. However, there are concerns that program revenues may be inadequate to remediate the superfund sites being evaluated. This bill will provide regulations for state superfund sites.

### **PURPOSE**

As proposed, C.S.H.B. 2776 provides regulations for state superfund sites.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 361.133, Health and Safety Code, by adding Subsections (g)-(i) to authorize the executive director of the Texas Natural Resource Conservation Commission (executive director) to use money in the Hazardous and Solid Waste Remediation Fee Fund, including interest credited under Subsection (b)(4), for expenses concerning a cleanup or removal of a spill, release or potential threat of release of a hazardous substance if the site is eligible for listing under Subchapter F, proposed for listing under Subchapter F, or listed under the state registry before September 1, 1989, and meets certain requirements, notwithstanding Subsection (c). Prohibits the Texas Natural Resource Conservation Commission (TNRCC) from using money in the hazardous and solid waste remediation fee fund to clean up certain items if TNRCC collects a fee that is deposited in a dedicated fund established for the purpose of cleaning up a facility, tank or site. Requires TNRCC to publish notice of its intent to perform the cleanup or removal in the Texas Register within a certain time period before TNRCC begins a cleanup or removal.

SECTION 2. Amends Section 361.136(i), Health and Safety Code, to require the storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action in this state conducted by the U.S. Environmental Protection Agency (EPA) to be exempt from the assessment of a waste management fee under this section. Makes a nonsubstantive change.

SECTION 3. Amends Section 361.183(a), Health and Safety Code, to require the executive director, before listing a facility on the state registry, to determine whether the potential danger to public health and safety or the environment at the facility can be resolved by an agreement under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 4. Amends Chapter 361F, Health and Safety Code, by adding Section 361.1855, as follows:

Sec. 361.1855. PROPOSAL OF LAND USE OTHER THAN RESIDENTIAL. Sets forth regulations regarding a public meeting on the appropriate use of land on which a facility is

located that is the subject of a remedial investigation/feasibility study other than residential use.

SECTION 5. Amends Section 361.187(b), Health and Safety Code, to require TNRCC to publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 30 days, rather than 45 days, before the date of the public meeting. Makes a conforming change.

SECTION 6. Amends Section 361.188(a), Health and Safety Code, to make conforming changes.

SECTION 7. Amends Section 361.189, Health and Safety Code, to authorize the executive director to request TNRCC to take certain actions regarding a facility. Provides that if TNRCC deletes a facility from the state registry because the cleanup of the facility is being addressed under Subchapter S, the facility automatically reverts to the status the facility had immediately before the facility was deleted from the registry on the date of the executive director's determination that the cleanup of the facility is not being addressed adequately. Provides that a public meeting is not required for an action under this subsection.

SECTION 8. Amends Sections 361.194(b) and (c), Health and Safety Code, to require the executive director to determine whether to prepare an affidavit. Requires the executive director, in making the determination, to proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost recovery action. Makes a nonsubstantive change.

SECTION 9. Amends Section 361.197, Health and Safety Code, by adding Subsection (d), to require TNRCC to file a cost recovery action against each responsible party for the total costs of an action taken under certain sections.

SECTION 10. Amends Section 361.200, Health and Safety Code, as follows:

Sec. 361.200. New heading: SETTLEMENT. Authorizes the settlement program to include certain terms. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 361.271, Health and Safety Code, by adding Subsections (e) and (f), to provide that a fiduciary's responsibility for solid waste is subject to Subchapter T. Provides that a lender's responsibility for solid waste is subject to Subchapter U.

SECTION 12. Amends Section 361.277, Health and Safety Code, as follows:

Sec. 361.277. New heading: EFFECT OF SETTLEMENT AGREEMENT WITH STATE. Sets forth the effects of a settlement agreement with the state. Deletes existing text regarding an action for contribution.

SECTION 13. Amends Section 361.343, Health and Safety Code, to require the court, in apportioning costs under Subsection (a), to credit a responsible party's share of the costs of eliminating a release or threatened release of solid waste the party's expenditures related to the cleanup at issue if TNRCC or the executive director approves the cleanup. Requires the court to reduce in an equitable and just manner the party's proportional share of the cost if the expenditures were made before the property was proposed to be listed on the state registry and TNRCC or the executive director approves the cleanup. Makes a conforming change.

SECTION 14. Amends Section 361.344(a), Health and Safety Code, to authorize a person who conducts a removal or remedial action that is approved by TNRCC and is necessary to address a release or threatened release may bring suit in a district court to recover the reasonable and necessary costs of that action. Provides that this right is in addition to the right to file an action for contribution, indemnity, or both in an appeal proceeding or in an action brought by the attorney general. Makes conforming changes.

SECTION 15. Amends Chapter 361, Health and Safety Code, by adding Subchapters T-V, as follows:

## SUBCHAPTER T. FIDUCIARY LIABILITY

Sec. 361.651. DEFINITIONS. Defines "fiduciary," "fiduciary capacity," and "solid waste facility."

Sec. 361.652. LIABILITY OF FIDUCIARIES. Sets forth the liability of fiduciaries.

## SUBCHAPTER U. LENDER LIABILITY

Sec. 361.701. DEFINITIONS. Defines "extension of credit," "financial or administrative function," "foreclosure," "foreclose," "lender," "operational function," "security interest," and "solid waste facility."

Sec. 361.702. EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT. Defines "owner or operator." Sets forth regulations regarding the exclusion of lenders who are not participants in management.

Sec. 361.703. PARTICIPATION IN MANAGEMENT. Defines "participation in management." Sets forth regulations regarding lenders who are participants in management.

## SUBCHAPTER V. IMMUNITY FROM LIABILITY OF INNOCENT OWNER OR OPERATOR

Sec. 361.751. DEFINITIONS. Defines "contaminant" and "innocent owner or operator."

Sec. 361.752. IMMUNITY FROM LIABILITY; ACCESS TO PROPERTY. Sets forth regulations regarding immunity from liability and the granting of access to property for purposes of investigation or remediation.

Sec. 361.753. CERTIFICATION. Sets forth regulations regarding certification as an innocent owner or operator.

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY. Sets forth the rights of an innocent owner or operator regarding contamination from a source not located on or at the property.

SECTION 16. Amends Chapter 2155C, Government Code, by adding Section 2155.145, as follows:

Sec. 2155.145. CERTAIN PURCHASES BY TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. Provides that TNRCC is delegated all purchasing functions relating to the administration of Subchapters F and I, Chapter 361, Health and Safety Code, subject to the rules adopted by the General Services Commission under Section 2155.132(c).

SECTION 17. Amends Section 2166.003(a), Government Code, to provide that this chapter does not apply to an action taken by TNRCC under Subchapter F or I, Chapter 361, Health and Safety Code, unless otherwise provided.

SECTION 18. Amends Chapter 2253A, Government Code, by adding Section 2253.002, as follows:

Sec. 2253.002. EXEMPTION. Provides that this chapter does not apply to a public work contract entered into by a state agency relating to an action taken under Subchapter F or I, Chapter 361, Health and Safety Code, or Subchapter I, Chapter 26, Water Code.

SECTION 19. Amends Section 26.265, Water Code, by adding Subsections (h)-(j), to make

conforming changes.

SECTION 20. Effective date: September 1, 1997.

SECTION 21. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 14.

Amends Section 361.344(a), Health and Safety Code, to make nonsubstantive changes.

SECTION 15.

Amends Section 361.652(c), Health and Safety Code, to provide that Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of solid waste if gross negligence or wilful misconduct of a fiduciary causes or contributes to the release or threatened release.

Amends Section 361.701(4), Health and Safety Code, to redefine "lender."

Amends Section 361.751, Health and Safety Code, to redefine "contaminant" and "innocent owner or operator."

Amends Section 361.752, Health and Safety Code, to provide regulations regarding a person that acquires a portion of a tract on which the source of a release of contaminants is located; to authorize payment for access to property; and to make a nonsubstantive change.

Amends Section 361.753, Health and Safety Code, to require TNRCC to deposit certain fees to the credit of the hazardous and solid waste remediation fee fund. Makes conforming and nonsubstantive changes.

SECTION 18.

Amends Section 2243.002, Health and Safety Code, to insert the chapter for Subchapter F and I, Health and Safety Code.