

- SUBJECT:** Regulating certain dry cleaning facilities
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Giddings, Elkins, Kolkhorst, Bohac, Martinez Fischer, J. Moreno, Oliveira, Solomons, Zedler
- 0 nays
- WITNESSES:** For — Phil Cates; Gerald Stavelly; Michael Edward Nesbit; Shirley Reichstadt
- Against — None
- On — Jackie Hardee, Texas Commission on Environmental Quality
- BACKGROUND:** The Texas Commission on Environmental Quality (TCEQ) administers a voluntary statewide program to clean up hazardous materials, including chemicals used in dry cleaning. The state pays for administrative costs and the dry cleaner and/or site owner pays for the cleanup costs. This program has cleaned about 100 contaminated dry-cleaning sites and has targeted another 300 sites for cleanup, but many additional sites await corrective action.
- Texas has more than 2,100 dry-cleaning retail outlets (called plants), about 1,500 of which store and use chemicals. Some cleaners have multiple pickup and dropoff locations for one plant. Most dry cleaners discover that a site is polluted when the landowner wants to sell or refinance the property, because most lending institutions require a site assessment before approving a loan.
- Several solvents on the market can be used for dry cleaning. It is estimated that almost half of Texas dry cleaners use perchloroethylene (also known as tetrachloroethylene), a petroleum-based solvent. When spilled, this chemical may spread through soil and into groundwater. It is harmful to humans, with hazards ranging from dizziness to death.
- The average cleanup of a perchloroethylene spill costs about \$300,000. If the chemical taints groundwater, the cleanup cost can exceed \$1 million.

DIGEST:

CSHB 1366 would add Health and Safety Code, ch. 374, entitled Dry Cleaner Environmental Response. It would require TCEQ to adopt and administer environmental performance standards for new dry-cleaning facilities; require owners of dry-cleaning facilities to register with the commission and pay fees to establish a cleanup fund; impose surcharges on dry-cleaning services and the purchase of cleaning solvents; and create an advisory committee to assist TCEQ in developing program rules. The bill's provisions would not apply to a governmental agency or prison or to a political subdivision that owns or operates a water supply, solid waste, storm water and drainage, or solid waste disposal system.

TCEQ would have to adopt rules necessary to protect the state's water and natural resources and to provide for prompt cleanup of releases from dry-cleaning facilities. The rules would have to include performance standards; requirements for removing dry-cleaning solvents and wastes from facilities that are to be closed; criteria for setting priorities for expenditure of money from the cleanup fund; and criteria for determining when corrective action would be considered complete. The performance standards would have to require proper storage and disposal of wastes that contained any quantity of dry-cleaning solvent; compliance with emissions standards adopted by the U.S. Environmental Protection Agency; structural requirements such as dikes to contain leaks and spills of solvents; and delivery of solvents to dry-cleaning facilities by means of closed, direct-coupled systems.

New dry-cleaning facilities would have to be built in compliance with TCEQ performance standards. Dry-cleaning facilities operating on January 1, 2004, would have to retrofit their operations to the new standards by January 1, 2006, but TCEQ could exempt a business with annual gross receipts of \$200,000 or less on the basis of financial hardship.

The bill would create a dry-cleaning facility release fund in general revenue, based on proceeds from program fees and surcharges, interest on fund investments, money from civil penalties, and money received by TCEQ in the form of grants, reimbursements, or appropriations. TCEQ annually could spend up to 15 percent of the fund amount for administrative and startup expenses until September 1, 2005. Thereafter, TCEQ could spend up to 10 percent of the fund amount annually for expenses.

Owners of dry-cleaning facilities would have to register annually with TCEQ and pay a fee of \$250 per facility. The bill would impose an environmental remediation charge of 1.5 percent on receipts for dry cleaning and laundering services. Some receipts would be exempt, such as those from coin-operated devices. The comptroller would have to adopt procedures for collecting, administering, and enforcing the surcharge and could retain up to 5 percent of the charges collected to cover costs. The environmental remediation charge could not be collected on or after July 1 if the balance of the dry-cleaning facility release fund exceeded \$20 million on April 1 of that year. The charge would be suspended until the fund balance was below \$10 million on April 1 of a particular year.

CSHB 1366 also would impose a fee of \$5 per gallon on the purchase of dry-cleaning solvents, except for a cleaner that never had used perchloroethylene. The distributor of the solvent would have to remit the fee to the comptroller.

The bill would prohibit a person from allowing perchloroethylene to be released intentionally. A person who knew of the release over a 24-hour period of more than one quart of solvent would have to contain and control the release immediately and notify TCEQ within 48 hours. TCEQ would have to investigate the leak and take corrective action if the leak resulted in contamination. Corrective action would include cleanup of affected soil, groundwater, or surface water using the most cost-effective method.

TCEQ would have to rank contaminated dry-cleaning sites according to the level of contamination. A person who owned a dry-cleaning facility or who had owned the property on which the facility was located for at least five years could apply to have the site ranked. The application would have to contain analyses of water and soil samples, hydrogeologic information, and other information and evidence. The bill would absolve an eligible applicant of liability under state law from any party, except a political subdivision, to compel corrective action or seek recovery of costs of corrective action that resulted from a release.

TCEQ could not spend more than \$5 million from the fund on corrective action for any one site and could not spend money from the fund unless an eligible owner had applied for ranking and the real property had been owned by the same owner for at least five years. The applicant would have to pay a

\$5,000 deductible for corrective actions taken. Money from the fund could not be used to compensate third parties for personal injuries or damage to property. The bill would specify other restrictions on the types of corrective action for which fund money could be spent.

TCEQ would have to establish the percentage of liability for cleanup costs at a site with more than one source of contamination. TCEQ could hold an owner liable for 100 percent of cleanup costs under certain circumstances.

The state would not be liable for loss of business, damages, or taking of property associated with a corrective action, nor to pay for corrective action costs from a source other than the fund.

The bill would establish an appeal procedure for people affected by TCEQ orders or decisions regarding use of the fund. It would create administrative penalties for a person who operated a dry-cleaning facility in violation of the bill; hindered a properly identified agent from entering, inspecting, sampling, or responding to a release; knowingly provided false information related to compliance; or knowingly destroyed, altered, or concealed records. The amount of a penalty could not exceed \$1,000.

TCEQ would have to report to the governor, lieutenant governor, House speaker, and members of the appropriate legislative standing committees each biennium on the amounts deposited into and spent from the fund, the extent of corrective action taken, and the ranking of sites.

The TCEQ executive director would have to appoint an advisory committee of three representatives of the dry-cleaning industry, one public representative of urban areas, and one public representative of rural areas. The committee would have to help TCEQ develop program rules and would have to review and comment on the methodology TCEQ used to rank contaminated sites and on the commission's biennial report.

TCEQ and the comptroller would have to adopt rules, forms, and performance standards by December 1, 2003. Performance standards would apply only to facilities that began business after April 1, 2004. The limitations on liability of the state and of eligible applicants would apply only to a cause of action that accrued on or after January 1, 2004, and before September 1, 2021.

The bill would take effect September 1, 2003, and would expire September 1, 2021. The sections related to TCEQ's biennial report, limitations on state liability and on liability of eligible applicants, and violations and penalties would take effect January 1, 2004.

**SUPPORTERS
SAY:**

CSHB 1366 would create great benefits for Texas' health and environment at no cost to general revenue. Owners of the Texas dry-cleaning industry have spurred this legislation, emphasizing the immediate need for a solution to the environmental cleanup problem. Although the bill would not offer a complete solution to this ever-growing problem, it would be a good start.

The bill would create an improved system that is the same as or similar to programs operated successfully in other states and that would incorporate technological progress in the cleaning process. Technological advances are likely to make cleanup easier and less expensive in the future, allowing more sites to be cleaned.

CSHB 1366 would have a positive impact on the Texas economy. It would help secure the jobs of dry-cleaning employees in a safer workplace and would provide security for family-owned businesses that cannot afford to clean up polluted sites. Some dry cleaners have gone out of business after losing their leases because the landlords were not willing to take the risk of perchloroethylene being spilled on their land. This bill would make it easier for cleaners to obtain or renew leases by providing funds for environmental cleanup in the event of spills. It also would make it easier for owners to sell land containing dry-cleaning operations and the operations themselves.

The bill not only would enable cleanup of contaminated sites but would prevent contamination by requiring simple retrofitting of all older operations above a certain revenue level that had used perchloroethylene. The retrofitting would occur at a minimal cost to dry cleaners, about \$1,000 per machine. Most plants operate with only one or two machines. The bill would protect smaller dry cleaners from going out of business by exempting them from retrofit requirements if the cost caused too much financial hardship.

Twelve other states have similar funds and have been successful at reducing pollution and cleaning up sites. In states that have implemented such a fund, the use of perchloroethylene has declined by as much as 70 percent.

CSHB 1366 would encourage owners and operators to clean up contaminated sites. A dry cleaner who leases a property and experiences a spill may close down, leaving the owner with a large cleanup cost. The bill would allow a political subdivision to make a claim against the owner to compel corrective action, thereby ensuring that cleanup occurred.

CSHB 1366 would encourage cleanup of contaminated sites across Texas. Insurance to cover these costs is very expensive and carries high deductibles. Some dry cleaners have gone out of business because of these costs and have abandoned the sites. The bill would set the deductible at an amount that most cleaners could afford and would spread the costs of the program across the industry, enabling even smaller operations to afford cleanup. It also would cover the cleanup of abandoned sites, which likely would not be cleaned up without outside funding.

Many smaller dry cleaners cannot afford to participate in the voluntary cleanup program. Even those who participate may remain in the program for years before any cleaning is done. Conflicts over cleanup costs often arise between owners and dry cleaners who lease the property, and each side hires its own experts to determine the extent and cost of the cleanup. This process is expensive and delays the cleanup. State regulation would eliminate this back-and-forth conflict because TCEQ would determine the priority and timing of cleanup.

Although this bill would not ensure cleanup of every contaminated site immediately, it would address the most polluted sites. Contamination from dry-cleaning sites rarely seeps into drinking water, and most sites are small. With the public-private partnership proposed by CSHB 1366, cleanup of polluted sites would occur more quickly than if cleaners and owners were left to do it on their own.

It is essential to limit the liability of participants in the program. CSHB 1366 would eliminate liability for bodily injury due to the contamination, which likely would affect no one, considering that no cases of bodily injury due to perchloroethylene contamination have been reported.

Privatizing the proposed fund would not work. The cost of insurance is prohibitive for all but the largest dry-cleaning operations in the state. Also, it

would not be possible to limit the liability of dry cleaners without offering some sort of insurance, and the problem of dry cleaners and owners arguing over the amount of liability would persist. State regulation would enable an impartial party to oversee the process and would keep cleanup costs as low as possible.

**OPPONENTS
SAY:**

CSHB 1366 would require dry cleaners to register with TCEQ regardless of whether they had caused contamination or used perchloroethylene or other harmful solvents. The bill essentially would create state-sponsored insurance, with no real incentive to participate except in case of a serious problem. The only benefit for which owners would be paying into the fund would be the limitation on liability.

CSHB 1366 would not result in cleanup of all contaminated sites, only of those that were most harmful to the public. TCEQ would have to prioritize sites by potential health risk. An estimated 2,100 dry cleaners are operating in Texas, and it is estimated that this fund would enable only 130 sites to be cleaned. Although not every dry-cleaning site is contaminated, it is likely that many more than 130 are contaminated. Even if a dry cleaner applied for cleanup, the bill would not guarantee that cleanup would occur.

CSHB 1366 would cost dry cleaners additional money that they do not have to pay now. As a result, they would likely pass this cost on to their customers by raising dry cleaning prices.

The bill's restrictions would be too weak to discourage the use of perchloroethylene. Users would be charged the same per-gallon fee for perchloroethylene as for other less harmful solvents. The bill would require dry cleaners to retrofit machines at a cost of about \$1,000 each. However, considering that many dry cleaners have gross receipts of \$200,000 a year or more and that perchloroethylene generally costs less than safer solvents, this minuscule amount would not discourage them from using perchloroethylene. Many customers are not aware of the potential harm that perchloroethylene and similar solvents can cause. To discourage the use of perchloroethylene, this bill should set a higher per-gallon fee on perchloroethylene than on safer solvents. It should require a public education program to make the public aware of the dangers of perchloroethylene so customers could make better choices about where they have their garments cleaned. It also should require

Texas to follow the lead of California and other states in requiring the gradual phase-out of perchloroethylene use.

NOTES:

According to the fiscal note, CSHB 1366 would generate about \$16.3 million for the dry-cleaning cleanup fund during fiscal 2004-05 and \$46.3 million through fiscal 2008. TCEQ would require 10 full-time employees (FTEs) in fiscal 2004 and 16 FTEs in subsequent years to implement the bill.

The committee substitute changed the filed version of HB 1366 by:

- requiring the advisory committee to include public members;
- allowing TCEQ to exempt businesses from retrofit requirements on the basis of financial hardship;
- deleting language that would have prohibited TCEQ from seeking out contaminated sites whose owners had not applied for the fund;
- specifying fund amounts that TCEQ could use for administration expenses, changing the registration fee from \$100 to \$250, changing the amount of gross business receipts to be deposited in the fund from 2.5 percent to 1.5 percent, and allowing the comptroller to retain 5 percent of the collected amounts to cover costs;
- applying the per-gallon fee to all dry cleaning solvents, not only to perchloroethylene;
- changing the limitation on the amount spent on corrective action on one site from 3 percent of the fund to \$5 million;
- allowing a political subdivision to make a claim against an owner to compel corrective action;
- changing the expiration dates for the statute and the fund; and
- adding penalties for violations.

The companion bill, SB 799 by Jackson, was considered in a public hearing by the Senate Natural Resources Committee on May 1.