

- SUBJECT:** Responsibility of port authorities, navigation districts for hazardous waste.
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 7 ayes — Bonnen, Howard, Driver, Homer, T. King, Kuempel, W. Smith
0 nays
- WITNESSES:** For — Tom Kornegay, Texas Ports Association

Against — Jon Fisher, Texas Chemical Council; Kinnan Golemon, Shell Oil Company; Mary Miksa, Texas Association of Business

On — Jackie Hardee, Texas Commission on Environmental Quality
- BACKGROUND:** The Solid Waste Disposal Act, Health and Safety Code, ch. 361, identifies the parties to be held responsible for the remediation of hazardous waste. When dredged material that has been placed on land is later determined to be hazardous waste, TCEQ tries to find the responsible parties and requires them to share the burden of remediation of the hazardous waste.

Health and Safety Code, sec. 361.271, defines responsible parties to include, among others: owners and operators of solid waste facilities, those who have formally agreed to dispose of the waste, and those who accept solid waste that is to be transferred to a disposal site. As owners of the land upon which hazardous material may be placed and as accepters of potentially hazardous waste, port authorities and navigation districts are considered responsible parties in the event they accept and place hazardous dredged materials on land within their jurisdiction.
- DIGEST:** CSHB 1705 would amend Section 361.271 of the Health and Safety Code to exempt port authorities and navigation districts, under certain circumstances, from being held responsible for release of hazardous waste solely for participating in activities related to the construction or maintenance of waterways to facilitate navigation.

Activities related to the construction or maintenance of waterways to facilitate navigation would include the dredging of materials within the

authority's jurisdiction, the placing of dredged materials on land, or the constructing or operating of a placement area for dredged materials.

Port authorities and navigation districts would be exempt from liability only if they acted within their own jurisdiction, required that dredged materials be sampled and analyzed before placing them on land, and after due diligence did not knowingly accept hazardous dredged material. Under these circumstances, they would not be considered responsible parties if material later was found to be hazardous waste.

CSHB 1705 would not exempt port authorities or navigation districts from liability if they were involved in causing or generating the hazardous waste.

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, 2005.

**SUPPORTERS
SAY:**

Port authorities and navigation districts should not be subject to liability when conducting the governmental function of accepting dredged material for placement on land. Port authorities are required to aid in maintaining the navigational ability of Texas waterways and should be exempt from liability while performing these functions.

CSHB 1705 would not entirely exempt port authorities and navigation districts from liability. The exemption would apply only if the port authority or navigation district were performing activities to facilitate navigation of the waterways.

By requiring that dredged material be tested for contaminants or hazardous contents before it is accepted, port authorities and navigation districts take necessary steps to help prevent the placement of hazardous waste on land. In the rare instance that dredged material is later found to be hazardous, port authorities who have exercised such precautions should not be held responsible.

Other similar bodies have statutory protection from liability while carrying out their governmental functions. Flood control districts are protected from liability while performing the governmental duty of maintaining the state's drainage corridors.

CSHB 1705 would not authorize port authorities to dispose of hazardous waste, and they have no interest in creating hazardous waste disposal sites within their jurisdictions. Port authorities and navigation districts would not be more likely to act carelessly in accepting dredged material because accepting hazardous waste would cause them to lose business.

Port authorities and navigation districts merely receive dredged materials from third parties. Those that take part in the generation of hazardous waste are the parties who should be held responsible.

CSHB 1705 would save the public money. Port authorities and navigation districts are publicly funded entities, and HB 1705 would place the financial burden of hazardous waste clean-up on the private companies responsible for generating it, rather than on the public.

Holding port authorities and navigation districts responsible for hazardous waste generated by private companies because TCEQ is unable to track down those companies is unnecessary. TCEQ has a procedure by which each private company in question must prove to the agency that it is not responsible for the generation of the hazardous material.

If all involved parties should be responsible, both the US Army Corps of Engineers and all dredging contractors should share in the responsibility for dredged material that is later found to be hazardous waste.

CSHB 1705 would benefit the state because TxDOT performs functions of port authorities in its role as a sponsor of the Gulf Intercoastal Waterway. CSHB 1705 would protect TxDOT from liability for hazardous waste that it did not participate in creating. Providing an exemption for TxDOT could save the agency future costs associated with the remediation of hazardous waste.

**OPPONENTS
SAY:**

TCEQ is not always able to identify the party responsible for the generation of hazardous waste because dredged materials often are found to contain hazardous chemicals common to many industries. The process of finding the generator of the hazardous waste is even more difficult in heavily industrial areas. To offset the costs to TCEQ of cleaning up hazardous waste, all involved parties, including port authorities and navigation districts, should bear responsibility for the costs of hazardous waste cleanup.

While port authorities and navigation districts may not have generated the hazardous waste, they become participants by accepting the waste and placing it on land.

CSHB 1705 would exempt the criminally and grossly negligent from being held liable for their actions. By accepting and placing hazardous waste on land, port authorities and navigation districts exercise negligence. Dredged material should be placed on land only by parties that accept responsibility for ensuring that it is not hazardous.

Exempting port authorities and navigation districts from liability when accepting and placing hazardous materials on land creates an incentive for them to act more carelessly with dredged material. Knowing that they cannot be held accountable for their actions under the law, port authorities and navigation districts would be likely to ignore the precautions they now take to prevent the placement of hazardous waste on land.

Remediation of hazardous waste is costly. It can cost TCEQ millions of dollars in a single instance. TCEQ should be able to recover expenses from any party involved in the creation, acceptance, or storage of hazardous waste.

Providing a partial exemption for port authorities and navigation districts is not good public policy. Legislation that allows responsible parties to avoid responsibility for contaminating the environment serves to harm rather than benefit the public good.

NOTES:

The substitute would apply specifically to navigation districts and port authorities, rather than political subdivisions and to hazardous waste rather than solid waste, as in the original bill. The substitute includes conditions under which port authorities and navigation districts would be exempt from liability for accepting dredged materials later found to be hazardous waste, rather than completely exempting them from liability. Also, the substitute would deny port authorities and navigation districts exemption from liability if they had participated in the generation of the hazardous waste.

The companion bill, SB 947 by Armbrister, has been referred to the Senate Natural Resources Committee.