

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1239
By: Jackson (Brown)
Natural Resources
5-15-97
Committee Report (Substituted)

DIGEST

The 74th Legislature enacted H.B. 2296, establishing the voluntary cleanup program under the Texas Natural Resource Conservation Commission (commission). Under that program, a person may clean up a contaminated site, with the approval and oversight of the commission. When the site has been remediated to the appropriate cleanup level, the site owner is provided with a certificate of completion, certifying that the site was properly remediated. Future landowners receive a release from state liability. The program encourages economic development of remediated property by ensuring that future landowners are not held responsible for contamination caused by previous owners. This bill would revise statutory language that has caused confusion for program applicants to clarify the definition of a "responsible party," allow the expenditure of federal funds for a brownfield program, and amend the time period allowed for resubmittal of an application. In addition, C.S.H.B. 1239 allows the commission to transfer a site or portion of a site that is subject to a permit or order into the voluntary cleanup program, and establishes the eligibility of certain persons for release from liability to the state for cleanup of contamination.

PURPOSE

As proposed, C.S.H.B. 1239 authorizes the expenditure of federal funds for a brownfield program, redefines "responsible party," and revises the time period allowed for resubmittal of an application in the voluntary cleanup program.

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 Sections 361.133(b) and (c), Health and Safety Code, to provide that the fund consists of money collected by the Texas Natural Resource Conservation Commission (commission) from federal grants received for the implementation or administration of state voluntary cleanup programs or federal brownfields initiatives. Makes conforming changes.

SECTION 2. Amends Section 361.603, Health and Safety Code, by adding Subsection (c), to provide that notwithstanding Subsection (a), a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. Provides that an administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

SECTION 3. Amends Chapter 361S, Health and Safety Code, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, by adding Section 361.6035, as follows:

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY. Provides that a person who purchased a site before September 1, 1995, is released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site before the purchase date if the person did not operate the site, or any portion of the site, before the purchase date; and another person that is a responsible party successfully completes a voluntary cleanup of the site. Establishes that a person described by Subsection (a)(2) remains liable to the state for any contamination that

was released at the site before the certification issue date; and is not liable to the state for any contamination released at the site after the certificate issue date, with certain exceptions.

SECTION 4. Amends Section 361.604(b), Health and Safety Code, to require a submitted application to contain general information concerning whether the voluntary cleanup is subject to Section 361.6035.

SECTION 5. Amends Section 361.605(b), Health and Safety Code, to authorize a person to resubmit an application to participate in the voluntary cleanup program once without submitting an additional application fee under certain conditions.

SECTION 6. Amends Sections 361.609(b)-(d), Health and Safety Code, to require the certificate of completion to include a legal description of the site and the name of the site's owner at the time the application to participate in the voluntary cleanup program was filed. Deletes a provision requiring the executive director to file a copy of the certificate of completion in the real property records of the county in which the site is located. Makes a conforming change.

SECTION 7. Amends Section 361.610, Health and Safety Code, to provide that a person who is not a responsible party under Section 361.271 or 361.275(g) at the time the person applies to perform a voluntary cleanup does not become a responsible party solely because the person signs the application. Provides that a person who is not a responsible party under Section 361.271 or 361.275(g) at the time the commission issues a certificate of completion under Section 361.609 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes. Provides that the release from liability provided by this section does not apply to a person under certain conditions. Makes conforming changes.

SECTION 8. (a) Effective date: September 1, 1997, except as provided by Subsection (b) of this section.

(b) Provides that SECTIONS 2-4 of this Act take effect on the later of September 1, 1997; or the date on which the commission enters into a memorandum of agreement with the United States Environmental Protection Agency, Region 6.

(c) Requires the commission to publish the memorandum of agreement described by Subsection (b) in the Texas Register.

(d) Sets forth the terms by which a person to whom notice of rejection of an application is issued under Section 361.605, Health and Safety Code, before September 1, 1997, is authorized to resubmit the application once without submitting an additional application fee.

SECTION 9. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 361.603, Health and Safety Code, to provide that a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order.

SECTION 3.

Adds Section 361.6035, Chapter 361S, Health and Safety Code, to set forth the terms by which certain persons are eligible for release from liability to the state for cleanup of contamination.

SECTION 4.

Amends Section 361.604, Health and Safety Code, to require a submitted application to contain information concerning whether the voluntary cleanup is subject to Section 361.6035.

SECTION 8.

Changes the effective date.