

## **BILL ANALYSIS**

Senate Research Center

S.B. 1226  
By: Brown  
Natural Resources  
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As Filed

### **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 are 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.

Because of concerns that program revenues may be inadequate to remediate the Superfund sites being evaluated, the Executive Director of the Texas Natural Resource Conservation Commission (commission) requested that a work group of industry and environmental stakeholders review the program's funding requirements and processes. After several meetings during 1996, the work group recommended changes in the program intended to expedite site cleanup and encourage the use of the voluntary cleanup program when possible. This bill includes the recommendations of that work group. The commission and the work group expect these program revisions to result in cost savings to the program, although specific amounts cannot be quantified.

This bill also includes provisions that are consistent with federal law enacted in September 1996, providing relief from liability for lenders and fiduciaries that have not been involved in the management of the site.

### **PURPOSE**

As proposed, S.B. 1226 establishes as law the recommendations of a work group of industry and environmental stakeholders sponsored by the executive director of the Texas Natural Resource Conservation Commission, regarding the cleanup of hazardous waste sites.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission under SECTION 3 (Section 361.189, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 361.183, Health and Safety Code, to require the executive director of the Texas Natural Resource Conservation Commission (executive director) to determine whether the potential endanger to public health and safety or the environment at a facility can be resolved by an agreement with the Texas Natural Resource Conservation Commission (commission) pursuant to Sections 361.601, et seq., before listing the facility on the state registry.

SECTION 2. Amends Section 361.184, Health and Safety Code, to set forth requirements applicable if a facility has been deleted in accordance with Section 361.189 based in whole or part on the facility being addressed under Sections 361.601, et seq, and the executive director determines that the facility is no longer being adequately addressed.

SECTION 3. Amends Section 361.189, Health and Safety Code, to authorize the executive director or any operator or other named responsible party of a facility listed or to be listed on the state registry to delete the facility from the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission

may by rule require. Requires the commission, by rule, to establish procedures, including public meetings, rather than public hearings, for review of requests submitted under this section.

SECTION 4. Amends Section 361.194, Health and Safety Code, to authorize, rather than require, an authorized representative of the commission to execute an affidavit. Sets forth a requirement for executive director in determining whether to execute the affidavit.

SECTION 5. Amends Section 361.133, Health and Safety Code, to authorize the executive director, for a site eligible for listing under Subchapter F, to use the money collected and deposited to the credit of the fund under this section, including interest credited under Subsection (b)(4) for certain expenses concerning a planned removal of a spill, release, or potential threat of release of a hazardous substance under certain conditions. Requires the commission, at least 30 days before proceeding under this subsection, to publish in the Texas Register a notice of intent to perform a planned removal under this section.

SECTION 6. Amends Section 361.197, Health and Safety Code, to require the commission, where the state performs a planned removal in accordance with Section 361.133(c)(7), to file a cost recovery action against all responsible parties for the total costs of the planned removal. Requires the commission to file a cost recovery action against all responsible parties for the total costs of actions taken pursuant to Sections 361.133(c), (1), (2), and (3).

SECTION 7. Amends Section 361.200, Health and Safety Code, as follows:

Sec. 361.200. New heading: SETTLEMENT. Provides that the commission shall assess, and, by rule, may develop and implement a settlement program. Requires the commission, under the program, to consider the advantages of developing a final settlement with potentially responsible parties that are responsible for response costs, rather than for only a minor portion of the response costs, at a facility because of hazardous substances. Deletes text regarding a party responsible for hazardous substances. Authorizes the settlement program to include de minimis settlements, covenants not to sue, mixed funding, and partial settlements.

SECTION 8. Section 361.185, Health and Safety Code, to require the commission, prior to completion of the remedial investigation/feasibility study and under certain conditions, to hold a public meeting that is legislative in nature to obtain public input on the land use proposal. Authorizes any interested person to comment. Requires the commission to publish notice of the meeting held pursuant to 361.185(d)(1) in the Texas Register and a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. Sets forth requirements regarding the notice. Requires the commission to also mail the same information to each potentially responsible party by certified mail, return receipt request, at the party's last known address at least 30 days before the public meeting. Requires the executive director, contemporaneously with the issuance of notice of the public meeting, to make available to all interested parties the public records the executive director has regarding the facility. Provides that nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party. Requires the executive director, after the public meeting, to select the appropriate land use.

SECTION 9. Amends Section 361.188, Health and Safety Code, as follows:

Sec. 361.188. FINAL ADMINISTRATIVE ORDER. (a)(2) Specifies the selected land use and remedial action.

SECTION 10. Amends Section 361.187, Health and Safety Code, to require the commission to publish notice of the meeting at least 30 days before the date of the public meeting. Makes conforming changes.

SECTION 11. 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 accomplished through the expenditure of public funds from the hazardous and solid

water remediation fee fund or generated in a removal or remedial action within the state conducted by the Environmental Protection Agency to be exempt from the assessment of a waste management fee under this section.

SECTION 12. Amends Section 361.343(a), Health and Safety Code, as follows:

Sec. 361.343. APPORTIONMENT OF COSTS. (a)(5) Requires the court, in apportionment, to recognize and give credit to a responsible party for that party's previous expenditures connected with the commission approved cleanup at issue. Requires the court to also give an equitable and just discount from the relative share of the responsible party for previous expenditures connected with the early commission approved cleanup at issue.

SECTION 13. Amends Section 361.344, Health and Safety Code, to authorize a person, who with commission approval, acts to eliminate a release or threatened release, in addition to having the right to file an action for contribution or indemnity, or both, in an appeal proceeding or in an action brought by the attorney general, to bring suit in a district court to recover costs incurred to eliminate the release or threatened release and other costs as the court, in its discretion, consider reasonable. Deletes text authorizing a person subject to a court injunction or an administrative order, or a third person, to bring suit to recover costs. Prohibits a person who has resolved his liability to the state regarding a site that is subject to Subchapter F of this code from being liable under this section or section 26.265 of the Texas Water Code for contribution, indemnity, or cost recovery to a person identified in subsection (a) of this section regarding matters addressed in the settlement with the state. Provides that such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

SECTION 14. Amends Chapter 361, Health and Safety Code, by adding Section 361.281, as follows:

Sec. 361.281. LIABILITY OF FIDUCIARIES. (a) In general. Prohibits the liability of a fiduciary under any provision of this code or the Water Code for the release or threatened release of a solid waste at, from, or in, connection with a solid waste facility held in a fiduciary capacity from exceeding the assets held in the fiduciary capacity.

(b) Provides that Subsection (a) does not apply to the extent that a person is liable independently of the person's ownership of a solid waste facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Provides that Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a solid waste if negligence causes or contributes to the release or threatened release.

(d) Prohibits a fiduciary from being liable in its personal capacity under this Code or the Texas Water Code for certain actions.

(e) Defines "fiduciary," "fiduciary capacity," and "solid waste facility."

(f) Provides that nothing in this section affects the rights or immunities or other defenses that are available under this code or the Water Code that are applicable to a person subject to this section. Provides that nothing in this section creates any liability for a person or a private right of action against a fiduciary or any other person.

(g) Provides that nothing in this section applies to a person under certain conditions.

(h) Provides that this section does not preclude a claim under this Code or the Texas Water Code against certain assets or a nonemployee agent or independent contractor retained by a fiduciary.

SECTION 15. Amends Section 361.271, Health and Safety Code, to provide set forth what

is excluded from the term "owner or operator." Prohibits a lender from being liable under this code or the Water Code, to undertake a removal or remedial action or pay a fine or penalty arising from the release or threatened release of solid waste, at, from, or in connection with the solid waste facility in which the lender maintains a security interest or which the lender has acquired through foreclosure, under certain conditions. Provides that where a lender after foreclosure operates, directs the operation of, or maintains the operation of business activities, this subsection does not exempt or excuse that lender from compliance with the legal requirements applicable to the operation of that business. Sets forth certain operational requirements. Defines "participate in management." Requires, for the purposes of this section, a person that is a lender that holds a security interest in or with regard to solid waste facility to be considered to participate in management only if, while the borrower is still in possession of the solid waste facility encumbered by the security interest, the person takes certain action. Sets forth additional provisions regarding the term "participate in management." Defines "extension of credit," "foreclosure," "lender," "operational function," "security interest," and "solid waste facility."

SECTION 16.           Effective date: September 1, 1997.

SECTION 17.           Emergency clause.