

BILL ANALYSIS

Senate Research Center
78R5489 SGA-F

S.B. 799
By: Jackson
Natural Resources
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DIGEST AND PURPOSE

Under current law, there is no provision to fund a dry cleaning pollution clean-up program. As proposed, S.B. 799 provides for a dry cleaning remediation program controlled by the Texas Commission on Environmental Quality.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Sections 374.051, 374.052, 374.053, and 374.154, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 374.104, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Health and Safety Code, by adding Chapter 374, as follows:

CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE SUBCHAPTER A. GENERAL PROVISIONS

Sec. 374.001. DEFINITIONS. Defines “chlorinated dry cleaning solvent,” “commission,” “corrective action,” “corrective action plan,” “dry cleaning facility,” “dry cleaning solvent,” “dry cleaning unit,” “executive director,” “fund,” “owner,” “release,” and “retailer.”

Sec. 374.002. APPLICABILITY OF OTHER LAW. Establishes that to the extent this chapter is inconsistent or in conflict with Chapter 361 or other general law, this chapter prevails.

Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. Provides that this chapter does not apply to a governmental entity, including a governmental agency or prison.

Sec. 374.004. ADVISORY COMMITTEE. (a) Requires the executive director of the Texas Commission on Environmental Quality (executive director) to appoint an advisory committee composed of representatives of the dry cleaning industry for the purpose of providing professional and practical expertise to the Texas Commission on Environmental Quality (TCEQ) and to take certain actions.

(b) Provides that a member of the committee serves at the will of the executive director.

[Reserves Sections 374.005-374.050 for expansion.]

SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) Requires TCEQ to adopt rules necessary to administer and enforce this chapter. Provides that rules adopted under this section must be reasonably necessary to preserve, protect, and maintain the water and other natural resources of this state and to provide for prompt corrective action of releases from dry cleaning facilities.

(b) Requires TCEQ to adopt rules that establish certain standards.

Sec. 374.052. FACILITY RETROFITTING. (a) Requires TCEQ by rule to require dry cleaning facilities operating on or before January 1, 2004, to implement the performance standards adopted under Section 374.053 not later than January 1, 2006.

(b) Provides that this section expires January 1, 2007.

Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING FACILITIES. (a) Requires TCEQ by rule to adopt performance standards for a new dry cleaning facility.

(b) Requires the rules adopted under this section to allow the use of new technologies as they become available.

(c) Requires the rules adopted under this section to meet certain requirements.

(d) Requires the rules adopted under this section to ensure that wastewater from a dry cleaning unit or discharge of dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

Sec. 374.054. COMPLETION CRITERIA. (a) Requires TCEQ, in determining whether a corrective action is complete, to consider factors listed under Section 374.051(b)(3) and other requirements.

(b) Prohibits a deviation from a state water quality standard from resulting in the application of a standard that is more stringent than the applicable standard, in considering a deviation under Subsection (a)(3).

Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a) Requires TCEQ to administer this chapter in accordance with this section.

(b) Requires TCEQ, to the maximum extent possible, to deal with contamination from dry cleaning facilities by using money in the funds and discourage other units of government, both federal and local, including the United States Environmental Protection Agency (EPA), from becoming involved in the contamination problems resulting from releases.

(c) Requires TCEQ to make every reasonable effort to prevent the listing of sites where dry cleaning solvents are involved on the federal National Priorities List under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.

(d) Prohibits TCEQ from seeking out contaminated dry cleaning facility sites because of the existence of the fund or this chapter but requires TCEQ to use money from the fund as sites are discovered in the normal course of the it's business.

(e) Requires TCEQ to carefully consider interim or early corrective action that may result in an overall reduction of risk to human health and the environment and in the reduction of total costs of corrective action at a site.

(f) Authorizes TCEQ, in its discretion, to use innovative technology to perform

corrective action.

(g) Requires money in the fund, to the maximum extent possible, to be used to address contamination resulting from releases.

Sec. 374.056. **REPORT TO GOVERNOR AND LEGISLATURE.** Requires the executive director, on or before December 1 of each even-numbered year, to submit to the governor, lieutenant governor, speaker of the house of representatives, and members of the appropriate standing committees of the senate and the house of representatives a report regarding certain information.

[Reserves Sections 374.057-347.100 for expansion.]

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 374.101. **DRY CLEANING FACILITY RELEASE FUND.** (a) Provides that the dry cleaning facility release fund is an account in the general revenue fund.

(b) Establishes that the fund consists of money from proceeds from surcharges and fees imposed by this chapter; interest attributable to investment of money in the fund; money recovered by the state under this chapter, including any money paid under an agreement with TCEQ or as civil penalties; and money received by TCEQ in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this chapter.

(c) Authorizes money in the fund to be appropriated only to TCEQ for the purposes of this chapter.

Sec. 374.102. **REGISTRATION; FEE; POSTING.** (a) Requires each owner of an operating dry cleaning facility to register with TCEQ on a form provided by TCEQ.

(b) Requires the registration to be accompanied by a fee of \$100 for each operating dry cleaning facility owned by the owner.

(c) Requires the fees under this section to be deposited to the fund.

(d) Requires the owner of a dry cleaning facility to post the owner's registration number, in a manner prescribed by TCEQ, in the public area of each of the owner's operating dry cleaning facilities.

(e) Requires each registration to be renewed annually.

Sec. 374.103. **ENVIRONMENTAL SURCHARGE, GROSS RECEIPTS SURCHARGE; DISPOSITION OF PROCEEDS.** (a) Establishes that an environmental surcharge on gross business receipts is imposed for the privilege of engaging in the business of laundering and dry cleaning garments and other household fabrics in this state, subject to Section 374.105. Requires the surcharge to be at a rate 2.5 percent of the gross receipts received from dry cleaning and laundering services. Requires the consumers to pay the surcharge to the retailer, who shall collect the full amount of the surcharge in the manner Chapter 151 (Limited Sales, Excise and Use Tax), Tax Code, prescribes for the collection of a tax.

(b) Provides that gross receipts otherwise subject to the surcharge imposed by this section are exempt from the surcharge if they arise from certain sources.

(c) Requires the surcharge be collected at the same time and in the same manner and to be administered and enforced in the same manner as the retail sales tax imposed under Chapter 151, Tax Code. Requires the comptroller to adopt any additional procedures needed for the collection, administration, and enforcement

of the surcharge imposed by this section and shall deposit all remitted surcharges to the credit of the fund. Provides that the proceeds of the surcharge include all money collected and received by the comptroller under this section, including interest and penalties on delinquent surcharge.

(d) Establishes that Chapter 151, Tax Code, applies to the surcharge imposed by this section to the extent that chapter is not inconsistent with this chapter.

Sec. 374.104. FEE ON PURCHASE OF DRY CLEANING SOLVENT; DISPOSITION OF PROCEEDS. (a) Provides that a fee of \$5 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene by an owner of a dry cleaning facility, subject to Section 374.105. Requires the person who distributes the solvent to pay the fee to the comptroller.

(b) Provides that the fee imposed, in the case of a fraction of a gallon, is the amount computed by multiplying that fraction by the amount of the fee imposed on a whole gallon.

(c) Prohibits a person who distributes a dry cleaning solvent from selling the solvent for use in a dry cleaning facility unless the person first obtains and records the registration number of the owner of the facility.

(d) Requires the fee to be collected at the same time and in the same manner and to be administered and enforced in the same manner as the retail sales tax imposed under Chapter 151, Tax Code. Requires the comptroller to adopt any additional procedures needed for the collection, administration, and enforcement of the fee imposed by this section and deposit all remitted fees to the credits of the fund. Provides that for the purpose of this section, the proceeds of the fee include all money collected and received by the comptroller under this section, including interest and penalties on the delinquent fees.

(e) Establishes that Chapter 151, Tax Code, applies to fees imposed by this section to the extent that chapter is not inconsistent with this chapter.

(f) Requires the comptroller to administer and enforce this section and adopt any rules necessary to carry out the comptroller's responsibilities under this section.

Sec. 374.105. IMPOSITION OF SURCHARGES AND FEES DEPENDENT ON BALANCE OF FUND. (a) Prohibits the surcharges and fees imposed by Sections 374.103 and 374.104 from being collected or required to be paid on or after July 1 of a calendar year if the executive director notifies the comptroller under Subsection (c) that the unobligated principal balance of the fund exceeds \$20 million on April 1 of that year.

(b) Requires the surcharges and fees imposed by Sections 374.103 and 374.104 to be reinstated effective July 1 of a calendar year if the executive director notifies the comptroller under Subsection (c) that the unobligated principal balance of the fund is less than \$10 million on April 1 of that year.

(c) Requires the executive director, not later than April 5 of each calendar year, to notify the comptroller of the unobligated principal balance of the fund on April 1 of that year.

(d) Requires the comptroller to promptly notify persons from whom a surcharge is to be collected under Section 374.103 and persons from whom a fee is to be collected under Section 374.104 if the imposition of the surcharges and fees are to be suspended or reinstated on the following July 1.

[Reserves Sections 374.106-374.150 for expansion.]

SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

Sec. 374.151. RESPONSE TO RELEASE. (a) Prohibits a person from intentionally allowing a release.

(b) Requires a person who knows of a release over a 24-hour period of more than one quart of a chlorinated dry cleaning solvent or of more than one gallon of a non-chlorinated dry cleaning solvent to immediately contain and control the release and notify TCEQ of the release before the expiration of 48 hours after the person learns of the release.

Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE; EMERGENCY ACTION. (a) Requires TCEQ, if a release or a potential release poses a threat to human health or to the environment, take certain actions.

(b) Authorizes emergency action under Subsection (a)(2) to include the treatment, restoration, or replacement of drinking water supplies.

Sec. 374.153. CORRECTIVE ACTION. (a) Requires TCEQ, subject to Subchapter E, to take corrective action for a release from a dry cleaning facility that results in contamination, including contamination that may have moved off the dry cleaning facility.

(b) Provides that corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost-effective method that meets certain requirements.

(c) Requires TCEQ to take certain actions.

(d) Requires TCEQ to ensure the removal and proper disposal of wastes generated by a release.

(e) Requires TCEQ, except as provided by Subchapter E, to pay the costs of corrective action conducted under this subchapter, regardless of whether the corrective action is included in a corrective action plan.

Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES. (a) Requires TCEQ, for a contaminated dry cleaning site that does not require emergency action under Section 374.152, to assign a rank for the site relative to other sites previously ranked and awaiting corrective action based on information contained in the application for ranking.

(b) Provides that certain persons are eligible to apply for a site to be ranked under Subsection (a).

(c) Establishes that if the applicant for ranking is not an owner of the real property, then the application is required to include proof that an owner of the real property has been notified of the application. Establishes that if an applicant is an owner of the real property and the facility is leased, the applicant is required to include proof that a lessee has been notified of the application.

(d) Requires the applicant for ranking to contain information and evidence required by TCEQ rule to aid in ranking. Authorizes the information and evidence required to include certain information.

(e) Requires the costs incurred by an applicant in collecting the information and evidence under Subsection (d) to be credited against the deductible payable by the applicant under Section 374.203(f).

(f) Requires TCEQ to notify the applicant of the relative ranking TCEQ assigns the applicant's site on or before the 90th day after the date the application is received by TCEQ.

(g) Requires TCEQ to keep a separate list for ranking applicants for the reimbursement of money spent on corrective actions taken before January 1, 2004.

Sec. 374.155. POWER TO MODIFY COMMISSION RANKINGS OR POSTPONE CORRECTIVE ACTIONS. Authorizes TCEQ to take certain actions.

Sec. 374.156. ENTRY ONTO PROPERTY. (a) Authorizes an authorized officer, employee, or agent of TCEQ, or a person under order of or contract TCEQ, at reasonable times and on written notice to the owner or occupant of any property or premises, to enter onto the property or premises to take corrective action if the executive director determines that the action is necessary to protect the public health or environment.

(b) Require TCEQ, if consent to enter is not granted by the person in control of a site that is the subject of a notice under this section, to issue an order directing compliance with the notice. Authorizes the order to be issued only after providing the notice and opportunity for consultation that are reasonably appropriate under the circumstances.

[Reserves Sections 374.157-374.200 for expansion.]

SUBCHAPTER E. LIABILITY AND RESPONSIBILITY.

Sec. 374.201. PROPORTIONATE SHARE OF LIABILITY. (a) Authorizes TCEQ, at a site with more than one source of contamination, to take certain actions.

(b) Requires TCEQ to issue an order establishing the percentage of liability. Provides that the order is binding and controls the obligation of the fund unless amended by TCEQ. Specifies that, if an appeal from the order is made, the percentage of liability established by the order must control for costs incurred while the appeal is pending.

Sec. 374.202. OWNER RESPONSIBILITY. (a) Authorizes TCEQ to hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if TCEQ finds, that the owner failed to meet certain requirements.

(b) Provides that for the purposes of Subsection (a), unless a transfer is made solely to take advantage of this section, purchasers of stock or other indicia of ownership and other successors in interest are not considered to be the same owner or operator as the seller or transferor of the stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator.

(c) Establishes that to the extent that an owner is an owner is responsible for corrective action costs under this subsection, the owner is not entitled to the exemption under Section 374.207.

Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE ACTION. (a) Defines "contaminated dry cleaning site."

(b) Requires TCEQ to limit reimbursement from the fund for corrective action costs incurred at a single contaminated dry cleaning site on or after September 1, 2003, and before January 1, 2005, to an amount not to exceed \$20,000.

(c) Requires TCEQ to limit payment from the fund in a fiscal year for corrective action costs incurred at a single contaminated dry cleaning site on or after January 1, 2005, to an amount not to exceed three percent of the total amount deposited to

the credit of the fund in the preceding fiscal year.

(d) Prohibits TCEQ from using money from the fund for the payment of costs in excess of \$5 million for corrective action at a single contaminated dry cleaning site.

(e) Prohibits TCEQ from using money from the fund for corrective action at a contaminated dry cleaning site unless at the time corrective action is to begin the site has been under the same ownership for not less than five years.

(f) Requires the owner of a dry cleaning facility, or other person who submits the application for ranking the facility under Section 374.154, to pay as a deductible the first \$5,000 of corrective action costs incurred because of a release from the dry cleaning facility. Authorizes TCEQ to take corrective action regardless of whether it obtains the deductible.

Sec. 374.204. **LIMITATION ON LIABILITY.** Prohibits the fund, TCEQ, the executive director, this state, or agents or employees of this state from being held liable for loss of business, damages, or taking of property associated with any corrective action taken under this chapter.

Sec. 374.205. **LIMITATION ON USE OF FUND FOR THIRD PARTIES.** Prohibits money from the fund from being used to compensate third parties for bodily injury or property damage caused by a release, other than property damage included in a corrective action plan approved by TCEQ.

Sec. 374.206. **USE OF OTHER SOURCES OF MONEY.** Provides that this chapter does not create a liability or responsibility on the part of TCEQ, the executive director, this state, or agents or employees of this state to pay any corrective action costs from a source other than the fund or to take corrective action if the amount of money in the fund is insufficient.

Sec. 374.207. **ELIGIBLE OWNER EXEMPT FROM CERTAIN CLAIMS.** Prohibits an administrative or judicial claim from being made under state law against the owner or other person by or on behalf of a state or local government or by any other person to compel corrective action or seek recovery of the costs of corrective action that result from the release, if an owner or other person is eligible under this chapter to have corrective action costs paid by the fund.

Sec. 374.208. **UNAUTHORIZED PAYMENTS.** (a) Authorizes TCEQ to pay costs from the fund under this chapter only if the costs are integral to corrective action for a release or required for the administration or enforcement of this chapter.

(b) Prohibits TCEQ from spending money from the fund for certain purposes.

[Reserves Sections 374.209-374.250 for expansion.]

SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS; PENALTIES

Sec. 374.251. **REVIEW OF ORDERS AND DECISIONS.** (a) Authorizes a person affected by a TCEQ order or decision of under this chapter, on or before the 15th day after the date of service of the order or decision, to make a written request for a hearing.

(b) Provides that a person affected by the decision in an administrative hearing under Subsection (a) is entitled to judicial review and may appeal the decision on or before the 31st day after the date on which the decision was rendered.

Sec. 374.252. **VIOLATIONS; PENALTIES.** (a) Provides that a person is subject to an

administrative penalty if the person fails to meet certain requirements.

(b) Authorizes TCEQ, upon finding that a person is subject to an administrative penalty, to impose on the person an administrative penalty in an amount not to exceed \$500 for each violation.

(c) Requires TCEQ, in assessing an administrative penalty under this section, to consider, if applicable, certain factors.

SECTION 2. (a) Requires TCEQ, not later than December 1, 2003, to adopt any rules, performance standards, or forms required for the implementation of Chapter 374, Health and Safety Code, as added by this Act

(b) Provides that performance standards for new dry cleaning facilities under Section 374.053, Health and Safety Code, as added by this Act, apply only to a dry cleaning facility first brought into use on or after April 1, 2004.

(c) Requires the comptroller, not later than December 1, 2003, to adopt any rules or forms required for the implementation of the comptroller's duties under Chapter 374, Health and Safety Code, as added by this Act.

(d) Provides that the changes in law made by Sections 374.204 and 374.207, Health and Safety Code, as added by this Act, apply only to a cause of action that accrues on or after January 1, 2004. Provides that a cause of action that accrued before January 1, 2004, is subject to the law governing the action that was in effect when the action accrued, and that law is continued in effect for that purpose.

(e) Provides that Chapter 374, Health and Safety Code, as added by this Act, does not apply to any corrective actions taken by the Texas Commission on Environmental Quality at a dry cleaning facility as defined by Section 374.001, Health and Safety Code, as added by this Act, before the effective date of this Act.

SECTION 3. (a) Establishes that this Act takes effect September 1, 2003, except as provided by this section.

(b) Prohibits TCEQ from collecting fees, fees, surcharges, or penalties imposed by this Act or depositing those fees, surcharges, or penalties to the dry cleaning facility release fund established under Chapter 374, Health and Safety Code, as added by this Act, before January 1, 2004.

(c) Prohibits disbursements from the dry cleaning facility release fund for the purposes of Chapter 374, Health and Safety Code, as added by this Act, from beginning before January 1, 2005.

(d) Provides that Sections 374.056 and 374.252, Health and Safety Code, as added by this Act, take effect January 1, 2004.