

SUBJECT: Criminal penalties for septic-tank violations on border

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Chisum, Gray, Hilderbran, Jackson, Oakley, Talton
0 nays
5 absent — Saunders, Blackwood, Eckels, Kuempel, Lewis

WITNESSES: For — Erich Morales, El Paso County Attorney's Office
Against — None

BACKGROUND: On-site sewage disposal systems regulated by Health and Safety Code Chapter 366 are systems of sewage treatment and disposal (usually septic systems) used only for disposal of sewage produced on the site where the system is located. The authority to regulate these systems was shifted from the Texas Water Commission to the Texas Department of Health by the 71st Legislature in 1989 in HB 2136 by Saunders, which recodified the Health and Safety Code. In 1992, during its first special session, the 72nd Legislature enacted SB 2 by Parker, which shifted the regulation of septic systems back to the Water Commission, which on September 1, 1993, will become the nucleus of a new environmental agency called the Texas Natural Resource Conservation Commission (TNRCC).

On-site sewage disposal systems are to be regulated by TNRCC or a local government entity designated by TNRCC. To be designated an authorized agent, a local government entity must inform TNRCC that it wants to regulate on-site sewage disposal systems in its jurisdiction, and adopt and submit to TNRCC an order or resolution that complies with, or is stricter than, Health and Safety Code Chapter 366.

To comply with this section, an order or resolution must incorporate TNRCC rules on abatement or prevention of pollution and prevention of injury to the public health, meet TNRCC minimum requirements for on-site sewage disposal systems and include a written enforcement plan. A first-time violation of these standards is punishable by a fine of \$50 to \$100.

DIGEST:

CSHB 1550 would make offenses under Chapter 366 of the Health and Safety Code Class C misdemeanors, with a maximum penalty of a \$500 fine. The bill also would make it an offense for a person in a county contiguous to the international border to violate rules regulating on-site sewage disposal systems adopted by TNRCC or by a local government entity designated by TNRCC as an authorized agent.

An emergency repair to a system, done without a permit in accordance with the rules for emergency repair under the Water Code, would *not* constitute an offense if a written statement describing the need for the repair was provided to TNRCC or its authorized agent within 72 hours of starting the repair.

The provisions of HB 1550 would apply only to offenses committed on or after September 1, 1993, the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 1550 would correct a legislative oversight and allow for strict regulation of septic tanks in the counties along the Mexican border, where septic-tank use is particularly prevalent.

When the authority to regulate septic systems was shifted from the Texas Water Commission to the Texas Department of Health in 1989, the Legislature failed to provide penalties equivalent to those previously found in the Water Code. This error was not rectified when authority to regulate septic systems was subsequently shifted back to the Water Commission, which soon will become part of TNRCC.

CSHB 1550 would remedy this oversight and ensure that those who violate statutory provisions concerning the regulation of septic systems can be penalized appropriately. Currently, septic system owners may illegally construct, extend, modify or use septic systems almost with impunity.

In border counties, where there is a high incidence of infectious diseases, lax septic-tank regulation constitutes a threat to the public health and welfare. These counties have many residential subdivisions, usually found in unincorporated areas. These "colonias" often lack sewers, water, electric, or gas service and paved roads. The improper disposal of raw sewage in

these areas has led to a high incidence of infectious diseases. In some unincorporated areas of El Paso County, 35 percent of children by age 8 and 90 percent of adults over 35 have contracted infectious hepatitis, which can be spread by improper sewage disposal.

Making a first-time violation a Class C misdemeanor would give prosecutors flexibility to assess a larger fine for serious or flagrant violations. Usually some part of the fine is deferred and applied to the cost of constructing or repairing the system. Requiring written notice of emergency repairs would close another loophole that some unscrupulous operators use to work on sewage disposal systems without permits.

OPPONENTS
SAY:

A penalty of \$500 would be too much for a minor violation of septic system regulations. The current penalty of \$50 to \$100 suffices.

NOTES:

The substitute added a provision ensuring that CSHB 1550 would not affect the state consolidation of environmental agencies that will begin on September 1, 1993 with the creation of the Texas Natural Resource Conservation Commission.

A related bill, SB 1042 by Parker, which would provide for civil and administrative penalties for violations of Health Department regulations of on-site sewage disposal systems, passed the Senate by voice vote and referred to the House Environmental Regulations Committee. HB 2678, the House companion to SB 1042, has been referred to a subcommittee by the House Environmental Regulations Committee.