

SUBJECT: Allowing sale of non-low-flush toilets for remodeled buildings

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 7 ayes — Counts, Yost, Combs, Corte, King, Puente, Walker

0 nays

2 absent — R. Lewis, Stiles

WITNESSES: For — None

Against — Tony T. Gregg, Texas Section of the American Waterworks Association

BACKGROUND: Since 1991 the Texas Health and Safety Code has required that toilets sold, distributed and imported into the state by contractors, major suppliers and manufacturers meet the flush-flow rate established by the American National Standards Institute for ultra-low-flush toilets. Exempted from the low-flush requirements are toilets ordered by or already in an inventory on January 1, 1992, fixtures originally installed before January 1, 1992, and reinstalled in the same building on or after that date and fixtures imported by homeowners for use in their own home.

Selling toilets that do not meet low-flush requirements can result in administrative or civil penalties not to exceed \$5,000 for each violation and for each day of a continuing violation.

DIGEST: HB 276 would allow sale of toilet fixtures that exceeded the low-flush flow rate required by the Water Saving Performance Standards in Texas Health and Safety Code sec. 421 under the following circumstances:

- the toilet is to be installed during the remodeling of a building, the sewer pipes of which were laid before January 1, 1992, and which would not be replaced during the remodeling and,

- the size of the sewer pipes and the degree of fall would not accommodate the maximum flow for a low-flush toilet required by Health and Safety Code sec. 421.

The bill would take effect September 1, 1995

**SUPPORTERS
SAY:**

Low-flush toilets have elicited complaints from contractors and others in the plumbing industry because they work poorly in some older homes. Older plumbing systems were built to work with a certain amount of water and function poorly with the reduced flow from low-flush toilets. Eventually, accumulated waste material blocks sewer pipes.

HB 276, which has a very limited application, would permit only people with the sewer line problems caused by low-flush toilets to install a recycled used toilet with a higher flush-flow rate. Most people are happy to comply with low-flush requirements when possible, to help conserve water, but it is unfair to subject the owners of buildings with aging or incompatible sewer pipes to worrisome stoppages that may pose a safety hazard when sewer water backs up into the house. If low-flush toilets do not work correctly, no water is saved, as users flush their toilets over and over in an effort to remedy the problem.

The federal National Energy Policy Act (NEPA) of 1992 prohibited the manufacture of non low-flush residential toilets by 1994, gradually phasing out non-low-flush commercial toilet fixtures by 1997. A dwindling number of non-low-flush toilets are on the market, and conservation efforts would hardly be compromised by letting a few building owners with severe plumbing problems use older fixtures.

Remodelers of historically designated buildings may wish to choose to use an antique or antique replica toilet, which are seldom available in low-flush models. Where the sewer pipes justify the exception, the bill would allow such toilets to be installed.

**OPPONENTS
SAY:**

HB 276 would seriously undermine the water conservation savings (18,100 gallons per year per household, according to the Texas Water Development Board) that can result by installing a low flush toilet. In Texas 95 percent of the buildings were built before 1992. This bill could permit a large

number of building owners to install wasteful 3.6-gallon per flush toilets rather than the 1.6-gallon low-flush models. Low-flush toilets help cities avoid expansion of water plant capacity, keep water rates low and conserve precious water.

It would be almost impossible to enforce low-flush-toilet standards if the sale of inefficient 3.5-gallon per flush toilets is allowed. This bill would create a huge loophole for retailers. Any plumbing retailer investigated for selling or reselling non low-flush toilets could claim the toilets were for use in older homes with old sewer pipes. An illegal resale market for used toilets already is flourishing, and this bill would encourage it.

No evidence suggests that low-flush toilets cause sewer line stoppages. Most low-flush toilets on the market today work well without any problems. Sewer line blockages occasionally occur with *both* 3.5- and 1.6-gallon toilets. Property owners may blame sewer line blockages on low-flush toilets when the actual cause is tree roots or some other factor.

Complaints about having to flush the toilet several times (rare in newer model low-flush toilets) have nothing to do with sewer line stoppages, which is the issue this bill purports to address.

If there is a special problem installing appropriate toilets in historically designated buildings, a narrowly drawn special exemption could be created for such buildings, rather than a rule applying to virtually all buildings now standing.