

- SUBJECT:** Increasing criminal penalties for illegal dumping
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 9 ayes — Chisum, Bonnen, Kuempel, Uher, Bosse, Dukes, Geren, Howard, Zbranek
0 nays
- SENATE VOTE:** On final passage, April 5 — 30-0, on Local and Uncontested Calendar
- WITNESSES:** For — Jim Allison, County Judges and Commissioners Association of Texas
Against — None
- BACKGROUND:** Health and Safety Code, sec. 365.012 establishes misdemeanor criminal penalties for the illegal disposal of litter or other solid waste. It is an offense to:
- ! dispose, allow, or permit the disposal of litter or other solid waste at a place that is not an approved solid waste site;
 - ! receive litter or other solid waste for disposal at a place that is not an approved solid waste site; or
 - ! transport litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.
- DIGEST:** SB 906 would increase the penalties for illegal dumping, most notably creating a state-jail felony offense (180 days to two years in a state jail and an optional fine of up to \$10,000) for large-scale illegal dumping.
- The bill would make it a class C misdemeanor (maximum fine of \$500) to illegally dispose of litter or other solid waste that weighed five (reduced from 15 under current law) pounds or less or had a volume of five (reduced from 13) gallons or less. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the litter or other solid waste weighed between five (reduced from 15) and 500 pounds or had a volume of more than five (reduced from 13) gallons but less than 100 cubic feet. It

would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) offense to:

- ! the litter or other solid waste weighed between 500 and 1,000 pounds (rather than 500 pounds or more) or had a volume of between 100 and 200 cubic feet (rather than 100 cubic feet or more); or
- ! the litter or other solid waste was disposed of for a commercial purpose and weighed between five and 200 pounds (rather than more than five pounds) or had a volume of more than five gallons but less than 200 cubic feet (rather than more than 13 gallons).

Illegal disposal of litter or other solid waste would be a state-jail felony if the litter or other solid waste:

- ! weighed 1,000 pounds or more or had a volume of 200 cubic feet or more;
- ! was disposed of for a commercial purpose and weighed 200 pounds or more or had a volume of 200 cubic feet or more; or
- ! was contained in a closed drum barrel.

An illegal disposal of litter or other solid waste offense could be prosecuted without alleging or proving any culpable mental state, unless the offense was a state jail penalty.

Courts would be able to order the Department of Public Safety (DPS) to suspend defendants' driver's licenses or permits or to deny the issuance of a license or permit of persons convicted of illegal dumping.

Persons convicted of illegal dumping would be required to pay to the court a \$50 illegal dumping cleanup fee as a court cost. Courts would have to deposit the fees to the credit of the illegal dumping cleanup account, which could be an account in the general revenue fund that could be appropriated only for the enforcement of the statute and the cleanup of illegal dumping.

SB 906 would take effect September 1, 2001.

SUPPORTERS
SAY:

SB 906 would help deter large-scale illegal dumping by making it a state-jail felony. Illegal dumping is increasing across the state. In some cases, dumpers have left over 50,000 pounds of waste; in fact, entire houses have been found discarded at dump sites. Dump sites in Houston often contain thousands of tires — a commonly dumped item — that the city must pay to clean up at a cost of \$16 per tire. Many commercial operations responsible for dumping would rather risk bearing the relatively minor penalty under current law than pay for the proper disposal of their waste.

SB 906 would help level the playing field for businesses that properly dispose of waste. Legitimate businesses currently are at a competitive disadvantage against businesses that illegally dump. Illegal operations can submit lower bids on contracts by scrimping on waste disposal costs or earn excess profit by charging customers for waste disposal and then illegally dumping the waste.

SB 906 would not impose overly harsh penalties for illegal dumping. It would preserve a range of penalties based on the volume of the waste illegally dumped, reserving the toughest penalty — a state jail felony — for those who intentionally dumped large amounts of waste illegally for a commercial purpose. State jail felonies are the most minor of felony offenses. Convicted offenders would serve in state jails rather than state prisons. The state jail system is designed to handle low-level, non-violent and property offenses of this sort.

Allowing courts discretion to have DPS suspend the driver's licenses of persons convicted of illegal dumping would give the courts more flexibility to handle illegal dumpers. License suspension would not be mandatory but would be imposed on a case-by-case basis as courts saw fit. Courts would consider a person's work and family circumstances when deciding about a license suspension. License suspensions can be a useful tool for handling offenders and already can be used for convictions for certain other criminal offenses such as graffiti and some drug offenses.

SB 906 would require a culpable mental state for the most serious offense, state jail felonies.

The court fee authorized by SB 906 would help enforce the illegal dumping statutes and aid in clean-up of waste throughout the state.

OPPONENTS
SAY:

SB 906 would make an unnecessary leap from misdemeanor to felony penalties for dumping offenses. A felony penalty would be inappropriate for dumping violations. These types of offenses are better handled in misdemeanor courts. In addition, lowering the lowest offense thresholds to five pounds or five gallons of litter or other waste could penalize citizens for improperly disposing of minor household garbage.

It is unfair to allow driver's licenses to be suspended for dumping offenses. A driver's license suspension can affect a person's ability to get to work, to take children to school, and more. Because people with middle and lower incomes often are more dependent on driving for their livelihoods or their family affairs than the wealthy, these suspensions could have a disparate effect on lower-income Texans. Suspending licenses could have the unintended consequence of more people driving without a license and therefore without liability insurance.

SB 906 also would criminalize people who did not intend to commit a crime. By not requiring a culpable mental state to prosecute misdemeanor illegal dumping offenses, people who were unaware of legal restrictions could be prosecuted for unknowingly disposing of waste in an illegal manner.

Imposing a \$50 court fee on illegal dumpers could be unfair considering the numerous other court fees and fines that can be imposed.

NOTES:

The committee substitute changed the original bill by adding provisions for class A misdemeanor offenses, creating the state jail felony offense, and increasing the illegal dumping fee from \$5 to \$50.

On April 10, the House passed a similar bill, HB 631 by S. Turner. The provisions for increasing penalties and creating a state jail felony are identical in both bills, but SB 906 added the provisions to suspend driver's licenses and the illegal dumping fee. HB 631 was reported favorably,

without amendment, by the Senate Natural Resources Committee on May 11 and recommended for the Local and Uncontested Calendar.