

SUBJECT: Exempting certain sanitary sewer overflow from public notice requirement

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, Johnson, Ashby, D. Bonnen, Callegari, Keffer, T. King,  
Larson, Lucio, D. Miller

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Carol Batterton, Water Environment Association of TX and Texas Association of Clean Water Agencies; Foster Crowell, City of Corpus Christi; (*Registered, but did not testify*: Lindsey Baker, City of Denton; Heather Cooke, Texas Section of American Water Works Association (TAWWA); Addie Crimmins, City of Garland; Wil Galloway, City of Victoria; Anna Holmes, The City of Dallas; Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth; Matt Phillips, Brazos River Authority; Charles Profilet, Southwest Water Co.; Dean Robbins, Texas Water Conservation Association; Brian Sledge, North Texas Municipal Water District; Frank Sturzl, City of Irving; Tom Tagliabue, City of Corpus Christi; Monty Wynn, Texas Municipal League)

Against — Eric Allmon, Greater Edwards Aquifer Alliance; (*Registered, but did not testify*: Ken Kramer, Sierra Club - Lone Star Chapter)

On — Robert Martinez, Texas Commission on Environmental Quality; (*Registered, but did not testify*: Susan Jablonski, Texas Commission on Environmental Quality)

BACKGROUND: Under Water Code, sec. 26.039, when an accidental discharge or spill occurs that may cause pollution, the responsible party is required to notify the Texas Commission on Environmental Quality (TCEQ) as soon as possible and no later than 24 hours after the occurrence. The individual's notice to the TCEQ must include the location, volume, and content of the discharge or spill. The individual running or responsible for the facility must notify appropriate local government officials and local media.

A sanitary sewer overflow (SSO) is a type of unauthorized discharge or

spill of untreated or partially treated wastewater from a collection system or its components (a manhole, lift station, or cleanout) before reaching a wastewater treatment facility.

**DIGEST:** CSHB 824 would exempt an accidental sanitary sewer overflow from the requirement to notify the Texas Commission on Environmental Quality (TCEQ), local government officials, or local media if the overflow was 1,000 gallons or less and had been controlled or removed before it could enter state water and adversely affect a source of drinking water.

TCEQ, by rule, would specify the conditions under which notification provisions would apply.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 824 would establish a minimum reportable volume for sanitary sewer overflows, providing relief for public wastewater utilities from the reporting burden and more meaningful information to the public. According to TCEQ rule, a sanitary sewer overflow must be reported to the TCEQ regardless of volume, as federal and state regulations do not have a specified minimum reporting volume. An informal survey of Texas utilities indicates that a large percentage of spills reported are less than 1,000 gallons. The majority of overflows of this size do not reach waters of the state and do not cause an environmental impact. The requirement to report all sanitary sewer overflows regardless of amount creates a reporting burden for public utilities and an information management burden for TCEQ. It also has the potential to mislead the public into thinking that a serious public health and safety issue exists every time an unauthorized discharge is reported.

CSHB 824 would not eliminate the clean-up requirements for any spill, just the reporting requirements for those under a certain threshold that did not impact state waters or drinking water sources. The committee substitute would address concerns about the exemption being too broad. It would lower the volume threshold for reporting to 1,000 gallons from 1,500 gallons and limit the exemption to sanitary sewer overflows, rather than all spills. It would further narrow the scope by providing that the reporting exemption applied only as long as all three conditions were met: the spill or discharge was less than 1,000 gallons, it did not reach state waters, and it did not adversely affect drinking water.

While there are concerns that HB 824 would not make any real change to law because current statute states that TCEQ be notified of any accidental discharge or spill which causes or may cause pollution, TCEQ rule clearly states that any sanitary sewer overflow must be reported to the TCEQ regardless of volume. This has generated an enormous number of reports to which TCEQ does not have resources or capability to adequately respond, even though they have the authority to do so. HB 824 would focus the process on spills that had the most environmental impact.

The proposal in CSHB 824 is consistent with other states, such as California, North Carolina, and South Carolina, that have made sanitary sewer overflows reporting requirements meaningful and not excessive.

OPPONENTS  
SAY:

Current protocol enables the TCEQ to pinpoint issues of concern and address them before they become major problems. Under CSHB 824, a facility having problems with spills that were relatively low volume but occurred on an ongoing basis could escape the attention of the TCEQ until a bigger problem had developed. Recent studies have shown that many spills under the reportable threshold of 1,000 gallons were repeat occurrences. Any measure that might compromise the ability of the TCEQ to identify persistent problems and enforce compliance would be counterproductive.

The bill also would remove the requirement to report a spill below the threshold to local government officials and the local media, which could keep the public in the dark about potential problems at a facility.

CSHB 824 would leave it to the facility to make a determination of not only the volume of the sanitary sewer overflow but whether the spill had been “controlled or removed” and whether the sanitary sewer overflow had entered “water in the state” or “adversely affected a public or private source of drinking water.” It would be dangerous to leave this as a judgment call, especially if the spill occurred in the recharge or contributing zone of an underground aquifer.

CSHB 824 would make TCEQ enforcement problematic since the TCEQ would be unaware of unauthorized discharges less than the designated threshold. This could interfere with the TCEQ’s ability to determine compliance with the notification requirements and its ability to ensure that the discharge did not result in any impacts to human health, public safety, or the environment. If the threshold were exceeded and not reported, the

TCEQ would not be aware unless a complaint or situation arose. This could allow a facility to cover up a problem that should be brought to the TCEQ's attention.

Concerns that the current notification process involves a short time frame and a costly and cumbersome process could be addressed with changes to the reporting system rather than an elimination of the reporting requirement. An alternative could be an electronic system to facilitate reporting by the facility and review by the TCEQ. This could improve the accuracy of the records kept by the TCEQ. To help ease the burden on facilities, the notification could be done monthly.

OTHER  
OPPONENTS  
SAY:

The Water Code already specifies that an accidental discharge or spill that may cause pollution would have to be reported. If a discharge or spill has no potential to impact waters regulated by the TCEQ, then the reporting of such a discharge or spill is already not required, regardless of volume. CSHB 824 would not make any real change to current law.

NOTES:

The companion bill, SB 584 by Hegar, was referred to the Senate Natural Resources Committee on February 20.

The committee substitute differs from the bill as filed by:

- adding local government officials and local media to those who would not have to be notified;
- changing the volume of overflow from 1,500 gallons to 1,000 gallons;
- limiting the exemption to a spill of sanitary sewer overflow rather than from a wastewater treatment facility or works or collection facility; and
- adding criteria for notification exemption that the spill be controlled and not adversely affect a source of drinking water.