

**SUBJECT:** Revising penalties for outdoor burning violations

**COMMITTEE:** Environmental Regulation — favorable, without amendment

**VOTE:** 9 ayes — Pickett, E. Thompson, Cyrier, Dale, Kacal, Landgraf, Lozano, Reynolds, E. Rodriguez

0 nays

**WITNESSES:** For — Steve Casey, Bell County Fire Marshall

Against — None

On — (*Registered, but did not testify*: Michael Blinn and Kelly Linden, Texas Commission on Environmental Quality)

**BACKGROUND:** Health and Safety Code, sec. 382.018 is part of the Texas Clean Air Act that establishes the authority and duties of the Texas Commission on Environmental Quality to regulate the outdoor burning of waste and combustible material by rule.

Under Water Code, sec. 7.187(b), burning certain combustible or waste materials outdoors in violation of Texas Clean Air Act rules is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

**DIGEST:** HB 1619 would amend Water Code, sec. 7.187(b) to revise penalties attached to burning heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes (combustible materials) and insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or demolition materials, furniture, carpet, or items containing natural or synthetic rubber (waste materials).

A violation of the Texas Clean Air Act's waste-burning rules would be a class C misdemeanor (maximum fine of \$500) if it was a first offense and did not involve burning combustible material.

A violation would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if it was a subsequent violation that:

- did not involve burning combustible or waste materials; or
- did involve burning waste materials but no prior violations involved burning combustible or waste materials.

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

- did involve burning combustible materials; or
- was a subsequent offense involving waste materials and a prior violation involved burning combustible or waste materials.

HB 1619 also would require that a violation be prosecuted only under a municipal ordinance if the violation was a first offense under both the outdoor burning rules and the municipal ordinance and did not involve the burning of certain combustible materials.

This bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

HB 1619 would help conserve law enforcement resources and provide authorities with more penalty options when addressing violations of rules under the Texas Clean Air Act that involve burning potentially hazardous materials.

First-time violations currently are punishable by a class A misdemeanor, a penalty that can profoundly affect an individual's livelihood and employment prospects. In practice, this has led some law enforcement officers to issue warnings, rather than class A misdemeanors, to avoid handing out overly harsh penalties, especially to first-time offenders who may have been unaware of the rules governing outdoor burning of waste. As a result, some burning offenses are going unpunished, while others are punished too severely. Trust in and cooperation with law enforcement can erode when individuals feel unfairly penalized, and the bill would help

alleviate this negative impact on the relationship between communities and law enforcement.

HB 1619 would create a more proportional response by allowing authorities to give tickets for class C misdemeanors for certain first-time violations. This could result in more uniform enforcement and reduce the number of improper burns in the state. It also would conserve valuable fire and law enforcement resources and alleviate jail crowding, while still providing an effective deterrent to would-be offenders.

An individual who received a ticket and a fine would have clear knowledge of the law and of the escalating punishments for subsequent offenses. If someone had a previous ticket, it also would demonstrate to a judge that the person had a history of violating the law on burning waste or other materials, which could inform the judge's decision on the appropriate penalty for the violation.

OPPONENTS  
SAY:

Decreasing penalties for first-time offenders who could endanger public health by violating waste-burning rules under the Texas Clean Air Act could dilute the deterrent to such behavior.

NOTES:

A companion bill, SB 1915 by Buckingham, was scheduled for a public hearing in the Senate Natural Resources and Economic Development Committee on April 4.