

BILL ANALYSIS

C.S.H.B. 3264
By: Guillen
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the Texas Commission on Environmental Quality has limited authority to shut down an unpermitted wastewater treatment facility for noncompliance while the facility awaits the issuance of a permit. The result is that unlicensed operators are able to accept waste with no regulatory oversight for months or even years while the permitting process takes place. In contrast, a permitted facility that is out of compliance can be shut down. These parties contend that this creates a double standard that rewards bad operators and punishes those who play by the rules. C.S.H.B. 3264 seeks to eliminate this double standard and encourage a level playing field in the market.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3264 amends the Water Code to authorize the Texas Commission on Environmental Quality (TCEQ) to issue an emergency order suspending operations of a treatment facility that handles waste and wastewater from humans or household operations, is required to obtain a permit from TCEQ, and is operating without the required permit. The bill requires TCEQ, if TCEQ determines that such a treatment facility is operating without a permit required by TCEQ, either to issue an order that both enjoins further operation of the facility until TCEQ issues the required permit and imposes an administrative penalty as provided by statutory provisions governing TCEQ's enforcement authority or to institute a civil action as provided by statutory provisions governing TCEQ's civil penalty authority to enjoin further operation of the facility until TCEQ issues the required permit and to impose a civil penalty. The bill establishes that TCEQ is not required to enjoin the operation of such a facility and authorizes TCEQ to impose other applicable penalties if TCEQ determines there is no feasible alternative treatment or disposal option for the wastewater being sent to the treatment facility, including the option of hauling the wastewater to a permitted facility.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

84R 26382

15.117.1179

Substitute Document Number: 84R 22876

While C.S.H.B. 3264 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 5, Subchapter L, Water Code, is amended by adding Section 5.5146, as follows:

Sec. 5.5146. EMERGENCY ORDER CONCERNING OPERATION OF CERTAIN WASTEWATER TREATMENT FACILITIES WITHOUT PERMIT.

(a) The commission may issue an emergency order under this subchapter suspending operations of a domestic wastewater treatment facility that is required to obtain a permit from the commission and is operating without the required permit.

SECTION 2. Chapter 7, Subchapter B, Water Code, is amended by adding Section 7.035, as follows:

Sec. 7.035. CORRECTIVE ACTION RELATING TO CERTAIN WASTEWATER TREATMENT FACILITIES.

(a) Except as provided in Subsection (b), if the commission determines that a domestic wastewater treatment facility that is required to obtain a permit from the commission is operating without the required permit, the commission shall:

(1) issue an order enjoining further operation of the facility until the commission has issued a permit authorizing the operation and imposing an administrative penalty pursuant to Section 7.052(c); or

(2) institute a civil action under Subchapter D to enjoin further operation of the facility until the commission has issued a permit authorizing the operation and to impose a civil penalty;

(b) The commission may initiate alternative enforcement action under this Chapter if the commission determines there is no feasible alternative treatment or disposal option for the waste stream being sent to the facility, including the option of hauling the waste stream to a permitted facility.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter L, Chapter 5, Water Code, is amended by adding Section 5.5146 to read as follows:

Sec. 5.5146. EMERGENCY ORDER CONCERNING OPERATION OF CERTAIN TREATMENT FACILITIES WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a treatment facility that:

(1) handles waste and wastewater from humans or household operations;

(2) is required to obtain a permit from the commission; and

(3) is operating without the required permit.

SECTION 2. Subchapter B, Chapter 7, Water Code, is amended by adding Section 7.035 to read as follows:

Sec. 7.035. INJUNCTION AND ENFORCEMENT RELATING TO CERTAIN TREATMENT FACILITIES.

(a) Except as provided by Subsection (b), if the commission determines that a treatment facility that handles waste and wastewater from humans or household operations is operating without a permit required by the commission, the commission shall:

(1) issue an order:

(A) enjoining further operation of the facility until the commission issues the required permit; and

(B) imposing an administrative penalty under this chapter; or

(2) institute a civil action under Subchapter D to:

(A) enjoin further operation of the facility until the commission issues the required permit; and

(B) impose a civil penalty.

(b) If the commission determines there is no feasible alternative treatment or disposal option for the wastewater being sent to the treatment facility, including the option of hauling the wastewater to a permitted facility, the commission is not required to enjoin the operation of the facility under

Subsection (a) and may impose other applicable penalties under this chapter.

SECTION 3. The changes in law made by this Act apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.