

**SUBJECT:** Creating an environmental hotline in the attorney general's office

**COMMITTEE:** Environmental Regulation — committee substitute recommended

**VOTE:** 5 ayes — Chisum, Jackson, Allen, Hirschi, Puente  
3 nays — Howard, Kuempel, Talton  
1 absent — Dukes

**WITNESSES:** For — Reggie James, Consumers Union; Julia Marsden, League of Women Voters of Texas; Leslie Fields, Sierra Club; Scott James, Public Citizen; Ruth Culver, East Texas Communities Network  
Against — Jon Fisher, Texas Chemical Council; Mary Miksa, Texas Association of Business and Chambers of Commerce; James Terrell, Texas Association Of Dairymen  
On — Ray Hall, Attorney General; John Young, Texas Natural Resource Conservation Commission; Patricia J. McDaniel, Texas Crime Stoppers; Chuck Lesniak, City of Austin; Thomas Collins

**DIGEST:** CSHB 1131 would require the attorney general, in coordination with Texas Natural Resource Conservation Commission (TNRCC), to establish, publicize and maintain a toll-free environmental hotline to receive information on violations and suspected violations of environmental laws.  
  
The attorney general, by joint rulemaking with TNRCC, would be required to compensate those who report information that substantially contributes to the assessment of a criminal, civil or administrative penalty for the violation of an environmental law. The award, capped at \$1,000, would be 10 percent of a fine or civil and administrative penalty ordered or agreed to by the violator and collected by the state. An award would be offered only if the fine or penalty was attributable to information reported by the person. The prosecuting attorney would determine if the information substantially contributed to obtaining the assessment.

The attorney general would establish, by rule, that not more than 10 percent of the total fines or penalties collected by the state in a fiscal year would be deposited to a special account in the general revenue fund to be used only to maintain the toll-free telephone line, investigations of alleged violations, and reward payments.

The bill would take effect September 1, 1997, and the attorney general would adopt rules concerning hotline award money no later than December 1, 1997.

**SUPPORTERS  
SAY:**

CSHB 1131 would create an environmental crime stoppers program, modeled after the successful Texas Crime Stoppers Program, to give the citizens of Texas an added incentive to report environmental violations to the state. Getting tough on environmental polluters would result in increased penalty revenue for the state.

CSHB 1131 would have the laudable result of increasing the public's chances of becoming actively involved in shaping the outcome of permitting and enforcement decisions made by state agencies. The Attorney General's Office is an ideal place for an environmental hotline. The environmental division within the office has the expertise to advise hotline staff concerning environmental violations and in publicizing and handling high-volume hotlines. Having one single environmental hotline that can be publicized statewide would be a great help to citizens in every area of the state.

Most people in the state have heard of the Attorney General's Office, which could handle the hotline without any additional costs to the state. Almost no one however, outside of those involved in environmental policy and the regulated community can even name the Texas Natural Resource Conservation Commission or identify it as the state's environmental agency.

Environmental violations are serious crimes that have the potential to harm all Texans, especially children. Most citizens do not take the the time to make official complaints about environmental violations unless they are seriously worried about their health or safety and want to protect their families and communities. HB 1131 is especially important to the people in communities with a heavy concentration of potential sources of

environmental contamination, which are often economically disadvantaged areas, so there is one, easily remembered number to call.

Frivolous complaints could easily be screened as TNRCC already has a procedure in place to prioritize reported violations and filter out harassing calls and frivolous complaints. The bill would not encourage “bounty-hunting” because rewards would only be granted to those whose information substantially contributed to obtaining an assessment. The program would help TNRCC keep an eye on the regulated community would alert the agency to serious problems they might never have discovered otherwise.

Ordinary citizens can and do have a good sense of when something is a serious environmental violation. Although environmental law is complex, discovering a serious violation can be as easy as following an odor. Deciding if charges should be filed and on what ground is the job of the experts at TNRCC and the Attorney General's Office and it would remain their job under this bill.

Ascertaining whether the information reported in a call “contributed substantially” to obtaining an assessment would not be difficult. These are terms of art often used and easily understood by the lawyers who would decide on whether or not an award was warranted.

With increased revenue from penalties, the environmental crime stoppers hotline would likely pay for itself. The fiscal note did not take into account increased penalty revenue and savings that could result if violations were swiftly uncovered and remediated. The release of even small amounts of toxic substances can result in millions of dollars of direct and indirect cleanup costs.

Even if the bill did result in a slight loss to general revenue, there would be a simple way to address the problem. Sometimes the TNRCC reduces or defers penalties in order to encourage violators to clean up a site more quickly. This would be a bargain if it resulted in swifter cleanup of a health and safety hazard. Sometimes, however, penalties are deferred inappropriately, and violators go unpunished. Reducing the rate of deferred

penalties in these cases could raise enough money to fund the hotline, in the unlikely case that it did not pay for itself.

OPPONENTS  
SAY:

The bill would set up an unnecessary environmental hotline at a cost of approximately \$598,383 annually out of general revenue at an agency without the technical expertise to decide whether the information being reported constitutes a violation or not. It is senseless to require the attorney general's office, which is not currently involved with the assessment of environmental administrative penalties, to administer a compensation program for environmental hotline callers.

Since the Attorney General's Office has said that the hotline could be manned by existing staff and would not result in additional costs, it can be presumed that the hotline would not be staffed with knowledgeable environmental attorneys. Instead the Attorney General's Office would likely refer almost every call to TNRCC, creating an unnecessary bureaucracy to transfer calls. TNRCC has already established several toll-free hotlines and is the agency to whom such calls should be directed so it makes no sense to create a hotline in the Attorney General's Office. Few, if any, staffers at the Attorney General's Office have a wide range of knowledge of environmental permits, rules and regulations.

It would be a better use of money, and probably lead to more violations being uncovered, to allow TNRCC to hire additional environmental enforcement staff rather than set up a hotline. Environmental laws can be extremely technical and difficult to understand, and the general public may have a hard time identifying a clear violation of environmental law. Out of ignorance, well-meaning citizens might file many complaints about actions that are not a violation of the law, trying up already overburdened TNRCC staff because it would be impolitic to be perceived as dismissing citizen complaints.

CSHB 1131 would create a bounty-hunting system for the detection of environmental laws and would result in citizens' reporting endless bogus reports in the hopes of winning \$1,000. Regulated industries could be harassed by those who oppose various facilities and would comb through the statutes to find minor technical violations of the law. Environmental

law, like tax law, is so complicated that even well-intentioned facilities may find it difficult to be in absolute compliance with every detail of the law.

In Harris County, Austin and other areas, local authorities have already set up hotlines that do a very good job. There is no need for the state to duplicate these efforts, which are more appropriately situated to respond to local complaints.

The cities and counties that already have environmental hotlines have never needed an incentive to encourage people to call. Awarding money to those who complain would encourage people to search for minor infractions of the law and harass industries that are already burdened by regulations so complex it is almost impossible to comply with every detail.

A cooperative approach with the regulated community, which provides vital services to the people of Texas, would lead to better compliance than the addition of unnecessary burdensome requirements. Administrative penalty fees, generated from the regulated community, should go to clean up abandoned sites and other critically under funded programs rather than going for the upkeep of a hotline and payment of callers.

Whether a caller's information has "contributed substantially" to the assessment of a fine would be a very subjective determination. This would lead to disputes about who would qualify for an award, wasting even more of the state's time.

OTHER  
OPPONENTS  
SAY:

There is no need to award people money for reporting environmental violations. Environmental hotlines in cities around the state are already flooded with calls. Incentives are appropriate in a crimestoppers program, in cases where people may be afraid to divulge information for fear of retaliation, or criminals may turn in a fellow criminal for the money, but they are unnecessary for environmental hotlines. Citizens are very concerned about actions they suspect will affect their health and safety and are quick to contact state officials when they suspect something is wrong. There is absolutely no need to reward people for reporting these violations.

NOTES:

Rep. Chisum plans to offer an amendment acceptable to the author providing that the executive director of TNRCC would be required, if necessary, to ensure that the hotline program would not result in a net loss to general revenue and could adjust the rate of TNRCC's deferrals of administrative payments to provide funding for the hotline.

The committee substitute would cap the award at \$1000, while the original version would provide that an award would be 10 percent of any fine or penalty. The committee substitute also deleted a provision in the original bill that would have provided for payment of a reward for contributing to a criminal conviction if the caller was found to have contributed substantially to obtaining that conviction.