

SUBJECT: Permitting on-site sewage disposal system permits

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Counts, Walker, Cook, Corte, King, R. Lewis
0 nays
3 absent — Culberson, Moffat, Puente

WITNESSES: For — Raymond Anderson, Harris County; Wayne Farrell; Paulo Pinto
Against — None

DIGEST: CSHB 3059 would establish new requirements for permitting on-site sewage disposal systems, also known as septic systems. The Texas Natural Resource Conservation Commission (TNRCC), or its authorized agent in a county, could not permit a system unless the applicant provided a signed contract for its maintenance. In Harris County, the applicant would be required to also provide a performance bond obtained from the maintenance contractor. The performance bond would be:

- solely for the protection of the owner of the system;
- conditioned on the faithful performance of the maintenance contract;
- of an amount reasonably related to the cost that would be incurred by the owner for failure to maintain the system as contracted;
- executed by a corporate surety, and
- payable to the owner of the sewage disposal system.

If the maintenance contract were revised or a new contract executed, the owner would be required to submit a copy of the new contract with 30 days. Permitting authorities would be allowed to establish reasonable administrative fees to carry out these requirements.

TNRCC or its authorized agents would be prohibited from imposing maintenance contract and performance bond requirements for an on-site

sewage disposal system for a single-family residence located on a tract of land greater than one-half acre in a county with a population of less than 100,000.

CSHB 3059 would allow TNRCC or its agent to require a property owner to repair a malfunctioning on-site sewage system within:

- 30 days if the owner had not been notified of the malfunction within the previous 12 months;
- 20 days if the owner had been notified of the malfunction once within the previous 12 months; or
- 10 days if the owner had been notified of the malfunction twice within the previous 12 months.

Electric utilities establishing new service connections in unincorporated areas would be required to provide a list of addresses of new service connections weekly and submit that list to the county judge. The county judge would forward the list to the authorized TNRCC agent for the area. Electric utilities could not be held liable for providing such information nor would any such information be considered an open record subject to disclosure.

CSHB 3059 would remove the requirement that TNRCC be the sole enforcement authority to initiate an enforcement action for sewage disposal systems, but would allow a local government to request TNRCC to initiate an enforcement action.

CSHB 3059 would take effect September 1, 1997. Maintenance contract and performance bond requirements would apply to all permits applied for on or after that date.

**SUPPORTERS
SAY:**

CSHB 3059 would help Texas deal with a problem that is growing along with its population — inadequate and potentially hazardous sewage disposal systems. On-site sewage disposal systems for either individual residences or clusters of homes are common in new suburban developments located too far from cities to link up with traditional sewer treatment plants. In 1990,

the state issued 18,000 permits for new on-site systems; in 1996, according to TNRCC estimates, some 45,000 systems were permitted.

The explosive growth in the use of these systems until recently has been largely unregulated. TNRCC has delegated authority to some county entities to permit systems, but oversight has been lax, at best. In 1996, for example, hundreds of new homeowners in the Waco area found to their dismay that county agents had approved inadequate systems that were already starting to fail, posing significant risks to health and safety. This example has been repeated across the state, where unscrupulous or inexperienced installers have put in systems that were inappropriate for soil conditions or inadequate for the size of the lot. These conditions can cause leaking tanks and flooded drainfields exposing raw or inadequately treated effluent and presenting true health hazards.

The TNRCC has implemented new rules for on-site systems and certification programs for installers and county agents. CSHB 3059 would complement these efforts with statutory requirements giving the full weight of the law to maintenance and enforcement procedures.

Good maintenance is key to keeping a properly designed and installed system working correctly. CSHB 3059 would require maintenance contracts for new systems, except those in rural areas with adequate space. The bill would impose special requirements in Harris County because of the density of development and the high water table. Failing septic systems in this setting would present genuine threats to the health of all residents.

CSHB 3059 would not assume any new authority for the state; health and safety issues are properly within its purview. Septic systems already fall under state regulation; this bill would just provide another tool to use in ensuring that the systems do the job for which they are intended.

The bill would not impose burdensome requirements on homeowners. It would not limit their rights to use a septic system, merely require that it be maintained for their own good and the good of their neighbors. The time periods specified for repairs in the bill are more than adequate; repeat offenders would have to comply with tighter deadlines because a history of problems means greater risk to human health and the environment. The bill

would not apply any retroactive requirements on systems already installed, but existing statutes and rules could still be used to deal with any problems among these systems.

OPPONENTS
SAY:

CSHB 3059 would impose burdensome requirements on individual homeowners forced to carry maintenance contracts and on utilities made to supply information on new connections. Many Texans do not need the services of a “professional” to maintain a septic system. Requiring a maintenance contract before a system could be permitted also could keep a family from moving into a new home. Most people move away from the city because of housing costs; this new requirement could force some individuals to stay put.

The requirements in Harris County would be particularly onerous. Harris County has the same kind of topography as East Texas, yet would be unfairly forced to comply with special restrictions. In addition, residents could fall victim to fly-by-night maintenance specialists, who would contract for services and then disappear with the money.

The repair requirements under the bill also would impose hardships on homeowners. Ten days to repair a malfunctioning septic system might not be long enough for rural areas where service personnel are scarce. The deadlines should be extended when circumstances warrant.

OTHER
OPPONENTS
SAY:

CSHB 3059 should apply to all septic systems, regardless of age or location. Any failing or inadequate system poses real health dangers.

NOTES:

The committee substitute to HB 3059 added provisions requiring a maintenance contact and performance bond for on-site sewage disposal systems, notice of new connections and time limits for repair of malfunctioning systems and deleted a provision that would have established an occupational licensing account.