

SUBJECT: Restricting solid waste disposal on private land

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Chisum, Jackson, Allen, Dukes, Hirschi, Howard, Kuempel, Puente, Talton

0 nays

WITNESSES: For — Patrick Pendleton, Harris County Pollution Control Department; Cathy Sisk, Harris County

Against — None

On — Barry Williams, Texas Natural Resource Conservation Commission

BACKGROUND : Under the Texas Litter Abatement Act in the Health and Safety Code, it is a criminal offense to receive, transport or dispose of litter or other solid waste at a place that is not an “approved solid waste site.” An approved solid waste site is one either permitted by Texas Natural Resource Conservation Commission (TNRCC) or licensed by a county. The criminal penalties for illegal dumping can be a Class A, B, or C misdemeanor, depending on the amount of waste illegally received, transported or dumped.

In 1993, the 73rd Legislature enacted HB 1951 by Solis, et al., establishing that the illegal dumping offenses of the Texas Litter Abatement Act do not apply to persons or their agents who dispose of or temporarily store for disposal litter and solid waste on their own land.

DIGEST: CSHB 717 would establish conditions under which individuals would be allowed to use their own land to dispose of or store for disposal solid waste or litter under the Texas Litter Abatement Act. Under CSHB 717, the litter or waste would have to be generated and disposed or stored on property the person owned, and the disposal could not be for a commercial purpose.

CSHB 717 would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 717 would stop landowners from operating unlicensed dumps on their property. The bill would close a loophole left in the 1993 bill, which was intended only to allow landowners to dispose of land-clearing debris (such as trees, leaves and branches) on their own land without incurring penalties for illegal dumping. Unfortunately, unscrupulous operators in several areas of the state have used this exception to improperly dispose of solid waste on private property, turning these properties into de facto dumps.

Open dumps of construction debris have become a problem in some areas. Contractors often hire a company to clean up a construction site after a project is completed. To avoid paying tipping fees at licensed landfills, some of these firms have been dumping the construction waste on land that they own or on the land of someone for whom they are acting as an agent. Some judges and prosecutors feel that current law is worded in such a way as to prevent prosecution of these people. Other problems are occurring in some new subdivisions, where developers purchase a low-cost plot of land expressly for dumping construction debris while the subdivision is being built. Even if the material is only being stored temporarily, it is a problem for those who live nearby.

An unregulated dump on private land is a health and safety hazard, as well as a terrible eyesore. Construction debris, for example, can contain roofing shingles, which are highly flammable, plastics, paint cans, sheetrock scraps and other materials that should be taken to a landfill.

CSHB 717 is carefully drafted to allow state and county officials to crack down on people who are operating unlicensed dump sites but would still allow property owners leeway to dispose of materials that they generate on their own land. In unincorporated areas of the state, under certain conditions, landowners are permitted to burn their household waste if they are not served by some kind of waste disposal service, and they could continue to do so under CSHB 717.

CSHB 717 would not apply to neighborhood eyesores. The nuisance statutes in the Health and Safety Code already allow someone to bring an action against a person storing old flowerpots, cars or other items that a neighbor may perceive as trash.

OPPONENTS
SAY:

Property owners should be allowed to dispose of waste on their own land, especially in rural areas where there are no waste disposal services available. There are already too many laws regulating what can and cannot be done on private property. Farmers might want to take branches and leaves from a neighbor to grind up and compost on their property, for example, but could be prevented from doing so under CSHB 717 because the waste was not generated on their land.

The language of CSHB 717 could be used to harass another person by claiming that the person's collection of old flowerpots or cars, for example, was actually solid waste that had been disposed of improperly because it was not "generated" on that person's property.

OTHER
OPPONENTS
SAY:

CSHB 717 should be amended to close all loopholes that allow unscrupulous landowners to turn their land into dumps. The bill should specify that waste could only be disposed of on the same land from which it was generated. Allowing a landowner to take waste generated on one piece of property to a different piece of property encourages disposal fraud; if the waste cannot be disposed of where it was generated, it should be taken to a landfill. The bill should also define "individual" to make sure the term could not be construed to mean a corporation, organization or other legal entity.

The bill should also specify that the only kind of waste that landowners can dispose of on their property would be organic waste generated by land clearing. The definition of solid waste in the Health and Safety Code encompasses a large number of substances, some of them quite hazardous.

NOTES: The committee substitute added the provision specifying that the disposal of waste could not be for a commercial purpose and deleted a provision that would have required that the waste be generated from the individual's residence or on land the individual owned.