

- SUBJECT:** Sending peace officer reports on environmental crimes to TCEQ
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 5 ayes — Bonnen, Chisum, Crownover, W. Smith, West
0 nays
2 absent — Kuempel, Flores
- WITNESSES:** For — *(On original bill:)* Mary Miksa, Texas Association of Business and Chambers of Commerce; *(On committee substitute:)* Dean Blumrosen, Walter Banark, B&B Iron and Metal Co., Inc.; Jon Fisher, Texas Chemical Council; Tom Hageman, Texans for Environmental Enforcement Review; Ronald D. Peterson, CAL-TEX Citrus Juice, Inc.
- Against — *(On original bill:)* Mary Kelly, Environmental Defense; Ken Kramer, Lone Star Chapter, Sierra Club; Dib Waldrip, Comal County Commissioners Court, County Engineer, District Attorney's Office; Cindy Humphrey; *(On committee substitute:)* Roger Haseman, Harris County District Attorney's Office
- DIGEST:** CSHB 3164 would require peace officers to notify the Texas Commission on Environmental Quality (TCEQ) in writing of certain alleged criminal environmental violations. This requirement would apply to alleged violations of the Water Code, Health and Safety Code, and any other law, rule, order, permit, or other TCEQ decision that is within TCEQ's jurisdiction and was committed by a defendant who had a permit issued by TCEQ or worked for someone with a TCEQ permit. Peace officers would have to include in the notice to TCEQ a report describing the facts and circumstances of the alleged criminal environmental violation.
- As soon as practicable, but at least within 60 days after receiving a notice from a peace officer, the commission would have to evaluate the report and decide whether an alleged environmental violation occurred and whether administrative or civil remedies would adequately and appropriately address the violation. The commission would have to consider the factors listed in sec.

7.053 of the Water Code, including: the nature, circumstances, extent, duration, and gravity of the prohibited act; the impact of the violation on air quality, certain types of water, or affected persons; facts about the violator such as the history, degree of culpability, and demonstrated good faith; and any other matter that justice may require.

If the commission decided that an alleged violation existed and that administrative or civil remedies were inadequate or inappropriate, it would have to notify the peace officer and recommend criminal prosecution. In all other cases, the commission would have to notify the peace officer in writing that the alleged violation was to be resolved through administrative or civil means.

Eighty percent of any fines, penalties or settlements recovered through a prosecution covered by CSHB 3164 would be given to the state to cover the costs of the bill. The remaining 20 percent would be given to any local government significantly involved in prosecuting the case. These requirements would apply whether the money was recovered through pretrial resolution, a plea agreement, or sentencing after trial.

It would be an exception to CSHB 3164 that the alleged violation clearly involved imminent danger of death or bodily injury under one of the 10 endangerment offenses listed in Title 7 of the Water Code.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. Within six months of the bill's effective date, the commission would have to have established procedures to meet the bill's requirements.

**SUPPORTERS
SAY:**

CSHB 3164 would help ensure that the state's environmental laws were interpreted and enforced fairly and consistently and would reinstate a process used until 1997 in which some alleged environmental criminal violations were reviewed by a state agency before being prosecuted.

CSHB 3164 would help protect individuals and companies against overzealous and unfair prosecutions. Some local prosecutors use criminal charges to pursue alleged environmental violations without adequately

considering the facts and circumstances of an event. In other cases, an alleged violation might be pursued criminally in one jurisdiction and not in another. Some prosecutors file criminal charges for minor or non-existent infractions. In some instances charges are brought by law enforcement officials with no specific knowledge of environmental laws and regulations. Individual workers sometimes are indicted mainly as a way to force companies into pleading guilty and paying fines. However, as a result of the indictment, their lives often are disrupted and their reputations damaged, and they must waste time and money dealing with the charge. In many of these instances, civil or administrative penalties would be more appropriate and more effective than criminal charges.

For example, a small amount of orange juice leaked from a Houston orange juice company's trash compactor into a city sewer that connected with a public waterway. The company and vice-president of the company were indicted even though there was no evidence of harm to the waterway and the problem had been fixed. The company pleaded to a lesser charge, and the vice-president's case was dismissed.

CSHB 3164 would address these problems by requiring cooperation among local law enforcement officers and state environmental regulators. It would allow the TCEQ to review an alleged environmental violation and decide how best to handle it after considering certain statutory factors. The best entity to determine whether a real crime has occurred is the TCEQ, which writes and interprets the complex environmental regulations. This bill could be especially useful to counties without a special environmental prosecutorial team or to small counties with limited resources that might not have the expertise to properly consider environmental violations.

CSHB 3164 would ensure that the laws would be applied fairly and consistently throughout the state. Violators in one part of the state would be treated like those in other parts, and alleged violations would be considered in the proper context. For example, if an accident occurred and a person had to make a choice between releasing something into a waterway and storing it in an unauthorized area, the best decision – although it might be illegal – might be to store it temporarily.

CSHB 3164 would not infringe on the rights of prosecutors because it would not prohibit any prosecutions even after a report had been sent to TCEQ, but instead would require that the TCEQ be informed of law enforcement officers' cases and that prosecutors be told if TCEQ was proceeding with administrative or civil penalties. This would help ensure that prosecutors knew whether they were pursuing appropriate cases.

CSHB 3164 would stipulate that a serious crime involving the imminent danger of death or bodily injury would not have to be reviewed first by TCEQ.

It is not unusual for the state to keep part of environmental fines. Under the Water Code, counties can keep only from 50 percent to 75 percent of some fines.

**OPPONENTS
SAY:**

CSHB 3164 would unfairly and unwisely constrain criminal prosecutions of environmental crimes by preventing local law enforcement officers from taking their cases directly to the prosecutor's office. Although the bill would not require TCEQ approval for prosecution, in practice CSHB 3164 most likely would mean that prosecutions of environmental crimes would proceed only if TCEQ approved. This inappropriately would infringe on the traditional process of having local prosecutors enforce the law.

Local prosecutors are in the best position to analyze an alleged crime and to decide whether to pursue cases, and courts are the best entity to decide culpability and punishments for actions that the Legislature has made criminal offenses. Texas traditionally has given local prosecutors the discretion of when to file criminal charges without review by a state agency, even though some may perceive this as resulting in uneven enforcement throughout the state.

CSHB 3164 could lead to some environmental crimes being ignored. In the past, the state has sought criminal prosecution for very few environmental crimes while some local jurisdictions have active environmental enforcement teams. Local prosecutors can pursue environmental crimes that the federal government or state agencies are too busy to handle or ones that they choose to ignore. Often these involve small- or medium-sized companies whose violations affect homeowners.

Lessening the power of prosecutors and substituting civil and administrative penalties for criminal penalties could lead to a decline in the enforcement of environmental laws and less pressure on persons and companies to comply with the laws. Criminal prosecution can be a better deterrent than civil or administrative penalties. Often companies will continue to violate environmental laws and simply pay any administrative or civil penalty without changing their practices.

It would be unfair to limit local governments to 20 percent of fines recovered under CSHB 3164. According to the fiscal note, because of the costs associated with prosecuting environmental crimes, such as lab analysis and expert witnesses, some local governments might not be able to recover the cost of prosecuting these offenses.

NOTES:

The original bill as filed would have required that before local prosecutors could file charges for an environmental violation, TCEQ would have been required to consult with the state attorney general on the alleged violation, and the attorney general would have been required to notify a local prosecutor about an alleged violation and offer to help in any prosecution.

The companion bill, SB 1265 by Armbrister, passed the Senate by 29-0 on April 25 and has been referred to the House Environmental Regulation Committee.