

- SUBJECT:** County abatement of illegal dumping after notice
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 8 ayes — R. Allen, W. Smith, Casteel, Coleman, Laney, Naishtat, Olivo, Otto
- 0 nays
- 1 absent — Farabee
- WITNESSES:** For — Donald Lee, Texas Conference of Urban Counties, Leilah Powell, Bexar County Commissioners Court; Cathy Sisk, Harris County Attorney, Harris County Public Health; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jim Lewis, McLennan County; Mark Mendez, Tarrant County Commissioners Court)
- Against — None
- BACKGROUND:** Under Health and Safety Code, ch. 343, counties and district courts may abate public nuisances in unincorporated areas of counties through injunction. Counties and residents may file suit to control public nuisances and be awarded attorney's fees and court costs if granted injunctive relief.
- For injunctive relief, an abatement procedure requires in part a written notice to the person responsible for causing the nuisance. That person has 30 days to respond to the county, control the nuisance, or file for a hearing. If the person fails to respond, a county may file a contempt of court motion with the justice of the peace court, may abate the problem, may fine the responsible person \$250 to \$400, and may hold a lien against the property on which the nuisance exists.
- DIGEST:** CSHB 1287 would authorize a county, through litigation, to prohibit or control access to property in order to prevent certain continued or future public nuisances. The bill would apply to:
- keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

- discarding refuse or creating a hazardous visual obstruction on county-owned land or on land or easements owned or held by a special district with the county commissioners court as its governing body; and
- discarding refuse on the smaller of an area that spans 20 feet on each side of a utility line or the actual span of the utility easement.

The county would have to demonstrate that the landowner or person responsible for the nuisance had failed to respond to two written notices of possible penalties for noncompliance. A person would have 30 days to respond to the first notice and 10 days to respond to the second notice.

In a county suit to abate a public nuisance, courts could not prohibit or control access by the owner or operator of a utility line or easement.

The bill would allow a county to use funds available under other sections of the Health and Safety Code to recoup the cost of the nuisance abatement if the cost exceeded the value of the property. Funds available under any other law for cleanup or remediation on private property would be eligible.

The bill would take effect September 1, 2005, and would not affect previously issued notices.

**SUPPORTERS
SAY:**

CSHB 1287 would allow counties more effectively to abate public nuisances like illegal dumping. Municipal landfills, regulated by the Texas Commission on Environmental Quality (TCEQ), are the only legal dumping sites, yet dumping on private property persistently is a problem in some counties. Counties could prevent future repetitive dumping by sufficiently demonstrating that the owner was non-responsive. Illegal dumping creates safety and environmental hazards, and counties should be allowed to abate such problems through litigation, rather than on-going issuance of fines.

The current abatement procedure for illegal dumping is not working. Several problems frustrate the process, which lacks an enforcement mechanism. The person receiving notice very often has no intention of responding to the county or stopping the dumping within the 30-day grace period of the written notices, so notices simply delay a county from filing contempt of court motions and fining the responsible party. Once the fine

is paid, the dumping often continues, and the county must repeat the process to no avail. CSHB 1287 would shorten the waiting period from 30 to 10 days for repeat offenders, enforcing fines more frequently to encourage compliance with the law.

Another problem is with absentee landowners. When the landowner is deceased or unidentified, the county ultimately cannot abate the nuisance. CSHB 1287 would allow a county, after issuing two notices, to prohibit access to the property to end the dumping.

Also, current law does not provide adequate financial resources for clean-up and remediation, which generally exceeds the amount of the fines. The assessed value of the property often is so low that holding a lien on the property renders very little revenue. HB 1287 would allow counties to tap into other solid waste clean-up and remediation fees to recoup costs without creating a new funding source. TCEQ would have discretion to allocate funds among counties.

The bill would provide the landowner a fair chance to respond to the initial notice. Although subsequent notices reduce the grace period, the bill would allow abatement of the dumping more quickly to the benefit of neighboring property owners and the environment. The prohibition on access to the property could not include the owner or operator of a utility or utility easement, so it should not prevent repairs and services.

**OPPONENTS
SAY:**

Because most solid waste clean-up and remediation funds are part of the TCEQ budget, CSHB 1287 financially could strain other programs. Moreover, if the number of counties eligible for such funds were excessive, the bill would not provide for how the TCEQ should allocate the spending among counties vying for the funds.

NOTES:

HB 1287 as introduced would not have exempted access by owners or operators of utility lines or easements from access from the prohibition against access to property. It also proposed to use funds only under chapters 361 and 364 to recoup the cost of public nuisance abatements.