

- SUBJECT:** Requiring TCEQ to authorize some outdoor burning
- COMMITTEE:** Environmental Regulation — favorable, without amendment
- VOTE:** 6 ayes — Bonnen, Driver, Homer, T. King, Kuempel, W. Smith
0 nays
1 absent — Howard
- SENATE VOTE:** On final passage, April 28 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — None
Against — Cyrus Reed, Lone Star Chapter, Sierra Club
On — Phil Harwell, Texas Commission on Environmental Quality
- BACKGROUND:** Health and Safety Code sec. 382.018 requires the Texas Commission on Environmental Quality (TCEQ) to control and prohibit the outdoor burning of waste and combustible material. The agency can include requirements about the particular method used to control or abate the emission. Using its rulemaking authority, the agency has developed an outdoor burning rule that prohibits outdoor burning anywhere in the state, but allows for exceptions. In many cases, the exceptions are allowed only when there is no practical alternative.
- The U.S. Environmental Protection Agency has established national ambient air quality standards for six air pollutants. When pollutant levels in an area violate a standard, the area is classified as a non-attainment area. Texas currently has four non-attainment areas — Houston-Galveston-Brazoria, Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso.
- DIGEST:** SB 1710 would require TCEQ to approve rules to authorize outdoor burning of waste under certain conditions. The waste would have to:
- consist of trees, brush, grass, leaves, branch trimmings, or other

plant growth;

- be burned in an area that met the national ambient air quality standards and on the property on which it grew; and
- be burned by the owner of the property or a person authorized by the owner.

TCEQ's rules could not require prior commission approval of the burning or authorize burning only when no practical alternative existed.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

SB 1710 is necessary to promote a sensible approach to the outdoor burning of yard waste in Texas. Currently, TCEQ rules generally prohibit burning yard waste unless there is no practical alternative. This has, in effect, worked to prohibit most outdoor burning of yard waste because TCEQ considers any jurisdiction with trash pickup to have an alternative. However, because many jurisdictions have trash pickup but not yard waste pickup and the burning of yard waste is not allowed, some Texans are left without an acceptable way to get rid of yard waste. Alternatives, such as recycling, composting, and mechanical chipping or mulching, are not always available or practical.

SB 1710 would address this problem by requiring TCEQ to develop rules to allow burning of yard waste under certain conditions. The bill would require the rules to limit the burning to plant matter and to allow the burning only in areas that met federal air quality standards. This would be a conservative, reasonable approach to allowing some burning in Texas. Although SB 1710 would apply to any area in the state that is not in non-attainment, TCEQ would write the rules and could take into account regional differences.

Although TCEQ could allow this burning under current law, it would be best for the Legislature to enact SB 1710 to give the agency direction and to establish Legislative intent. This is a common and necessary practice.

**OPPONENTS
SAY:**

SB 1710 also is unnecessary because TCEQ could adopt rules allowing the type of yard-waste burning contemplated by the bill. However, the agency has chosen to write rules with more limited exceptions so that Texans will consider alternatives such as recycling, composting, and mechanical chipping or mulching. Some of these exceptions could allow the type of burning described by SB 1710. Burning yard waste should be

avoided when alternatives exist because the effects of the burning, such as the smoke, can be serious. These problems could become more prevalent as more Texans move to rural areas to enjoy a more pristine lifestyle.

SB 1710 is too broad because it would require TCEQ to authorize outdoor burning in any area of the state that is a non-attainment area instead of tailoring permission to a specific area that might have a problem.