

- SUBJECT:** Authority of local governments to establish water quality standards
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 7 ayes — Bonnen, Howard, Driver, Homer, T. King, Kuempel, W. Smith  
0 nays
- SENATE VOTE:** On final passage, May 13 — 29-1 (Shapiro)
- WITNESSES:** For — Scott Halty, San Antonio Water System; Terry Irion, Texas Landowners Conservancy; Richard Perez, City of San Antonio; David Earl; William T. Gunn, III; Daniel C. Wheelus; Mike Willatt  
  
Against — Richard Alles, Greater Edwards Aquifer Alliance; Laura Huffman, City of Austin; Ken Kramer, Lone Star Chapter, Sierra Club; Brad Rockwell, Lauren Ross, Greater Edwards Aquifer Alliance; Mike Rutherford  
  
On — Robert T. Fitzgerald, Medina County Environmental Action Association
- BACKGROUND:** Water Code, sec. 26.177 governs the water pollution control duties of a city. It allows a city to establish its own water pollution control program, which can encompass the entire city and include areas within its extraterritorial jurisdiction necessary for the city to meet its water quality objectives.  
  
The city program's services and functions may include monitoring the discharge of waste into water and developing plans for controlling and abating pollution or potential pollution resulting from discharge of waste. The water pollution control and abatement program must be submitted to the Texas Commission on Environmental Quality (TCEQ) for review and approval.  
  
Those affected by a city's program that extends outside the city's limits may file an appeal to TCEQ or district court within 60 days of the enactment of the program. The issue on appeal is whether the program is

invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality. TCEQ or the district court may overturn or modify the city program.

**DIGEST:**

CSSB 1858 would allow a local government to establish a water pollution control program and enforce programs established before June 1, 2005, only to ensure compliance with TCEQ pollution and degradation standards and practices. In addition, local governments no longer would have independent authority to regulate water quality, issue permits, or establish standards or practices for water quality.

If three or more contiguous counties and each local government within those counties agreed on a water quality program, the region could establish a regional water pollution control and abatement program. Local governments within the region could perform water quality control functions under current law in accordance with the regional water control and abatement program adopted by the region. TCEQ would set the rules allowing the establishment of regional water pollution control and abatement programs. In addition, the programs would have to be approved by TCEQ to ensure that programs complied with TCEQ rules and met or exceeded TCEQ's minimum water pollution and degradation standards and practices. A water pollution control program would not be effective or enforceable until TCEQ approved the program.

If a city adopted a water pollution control program, it could not include extraterritorial jurisdiction located within a county that had an existing water pollution program. If there was overlap, the extraterritorial jurisdiction would be subject only to the county's program.

The bill also would change the title of Water Code, sec. 26.177, to "Water Pollution Control Duties of Local Governments."

TCEQ would be required to adopt rules necessary to administer these changes by September 1, 2006. This 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, 2005.

**SUPPORTERS  
SAY:**

CSSB 1858 would strengthen TCEQ's role in supervising water quality improvement while also developing a more comprehensive regional approach to water quality protection.

The way a city addresses water quality concerns inevitably impacts the water quality of other localities. Water quality is a regional issue rather than a local issue, yet the current approach to water quality is to micromanage it by city ordinance. This prevents cities and counties from having input into the water quality plans of neighboring counties. CSSB 1858 would give cities the opportunity to come together to address water quality in a regional manner. It would encourage counties to work together with the assistance of TCEQ to comprehensively address water quality problems.

The bill would not weaken water quality standards. By working in concert, cities could adopt regional rules that were more stringent than the minimum TCEQ standards. Creating a regional system would enable cities to coordinate their resources to implement better water quality programs.

Under current law, there are conflicting rules from city to city. By bringing TCEQ into the process, the bill would establish a centralized system of oversight to provide a coordinated rulemaking and enforcement process. TCEQ has proven itself to be very capable in the area of water quality protection.

**OPPONENTS  
SAY:**

This bill would roll back water quality standards in Texas that are widely supported by local communities. CSSB 1858 would strip local communities of the ability to implement water quality programs and might eliminate existing programs that go beyond the minimum water quality standards established by TCEQ.

There is a scientific consensus on how to protect water quality. TCEQ regulations do not meet the minimum acceptable standards needed to protect water quality nor are they meant to address the unique needs of each locality. Local governments have been able to fill in the gaps in TCEQ standards through city ordinances tailored to unique local circumstances. This bill would allow TCEQ to preempt decisions made by localities that have broad public support.

Local governments should continue to be able to create and enforce water quality regulations. While TCEQ has limited funds and manpower, local governments have access to the resources and expertise necessary to address water quality problems. Yet this bill would require TCEQ to play an even more active supervisory role over local government programs. This increased workload further would burden TCEQ's limited resources

and handicap its ability to adequately assure water quality. In addition, it would take time for TCEQ to adopt rules for the establishment of regional water quality programs, during which time developers would have free rein to implement plans that could harm water quality.

While regional planning is important, the bill would disrupt rather than facilitate the process in several ways. First, water quality solutions may differ from county to county. The bill could require three counties and all the cities within the county to agree to a plan, but there is no one-size-fits-all solution to water pollution. Each locality is in the best position to address its unique needs. In addition, a city could not move forward to protect water quality unless other cities also did so in lockstep. Counties have differing interests and budgets, and it would be difficult to obtain agreement among all the entities as required by CSSB 1858.

Finally, ambiguous language in the bill creates unclear guidelines for establishing water pollution control and abatement programs. For example, it is not clear exactly how a regional water pollution control program would be established — must it be instigated by TCEQ or must the regions come together to initiate the program? This ambiguity would make implementation difficult.

NOTES:

The committee substitute differs from the Senate-passed version by:

- limiting a local government's ability to enforce a water pollution control and abatement program to enforcing compliance with TCEQ standards;
- specifying that local governments have no independent authority to regulate water quality, issue permits, or establish standards;
- excluding a provision specifying that if extraterritorial jurisdiction regulated by a city also was regulated by a separate jurisdiction, the more stringent water quality program would prevail;
- omitting a provision that would allow water quality programs adopted before June 1, 2005, to continue to be enforced pending TCEQ review and approval or if the local government found an imminent threat to water quality;
- excluding a provision allowing local governments to establish more stringent standards than the minimum state water quality standards and requiring TCEQ to establish rules recognizing unique geological and environmental features, including the Edwards Aquifer; and

- allowing the adoption of regional water pollution control program under certain circumstances.