

SUBJECT: Notification in county deed records of the existence of a buffer zone

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Saunders, Mowery, Combs, Hilderbran, Howard, Krusee, B. Turner
2 absent — Alexander, Hamric

WITNESSES: None

DIGEST: CSHB 1059 would allow holders of a permit issued by the Texas Natural Resource Conservation Commission (TNRCC) to include in county deed records a statement that all of a particular tract of real property is located in a buffer zone required as a condition of the permit. The statement would also include the number of the permit. A buffer zone would be defined as an identifiable area of real property required by TNRCC to separate a specified activity, facility or equipment from other persons or property.

The purpose of the statement would be to provide notice to potential property buyers that all of a certain piece of property was located a certain distance from a facility or activity regulated by the commission. The existence of a buffer zone could not be construed to raise environmental or health and safety concerns or to suggest adverse effects on persons inside the buffer zone.

It would be an affirmative defense against an action for damages arising from an alleged devaluation of property resulting from a statement permitted by CSHB 1059 that the statement was filed in compliance with the provisions of the bill.

CSHB 1059 would not apply to real property located in a buffer zone that is owned by a permit holder.

CSHB 1059 would amend Water Code, chapters 26 and 27, governing water quality control, injection wells, and wastewater discharge permits, as well as three separate sections of the Health and Safety Code: Chapter 361, Subchapter C, governing solid waste disposal permits, Chapter 382,

subchapter C, governing permits issued under the Texas Clean Air Act, and Chapter 401, governing permits for the disposal of nuclear and radioactive waste.

CSHB 1059 would take effect September 1, 1995, and would apply only to a license or permit issued by the TNRCC on or after that date.

**SUPPORTERS
SAY:**

Buffer zones are required around environmentally sensitive facilities which the TNRCC deems as posing a possible risk to the public required for certain air, waste and water permits. The majority of buffer zones involve permits for hazardous waste facilities. Even though a buffer zone is created by permitting requirements, no entity regulates the buffer zone, and nothing prevents a home from being built within the buffer zone after a permit is issued.

Commercial facilities that dispose of radioactive waste, for example, are required to show TNRCC that there are no schools, residences, child care facilities or churches in the areas adjacent to the proposed facility. Once the permit is granted and the facility is constructed, buffer zones surrounding the facility are designated. However, schools, churches, residences, and child care facilities may then move voluntarily into these buffer zones.

It is good public policy to inform potential property buyers that the piece of property they are considering buying is located in the buffer zone of a regulated facility. That way they can make an informed decision about whether or not they wish to purchase that piece of property.

Many of these facilities were sited in open areas or on the outskirts of town years ago, and communities grew up around them. Those concerned about their close proximity to these facilities may seek to pressure facilities to close down and move away, claiming that their property is devalued by the proximity of regulated facilities.

CSHB 1059 would give permitted facilities the opportunity to forewarn property buyers that the piece of property that they are proposing to buy might be located in a buffer zone of a regulated facility. If a buyer later sues for damages alleging that their property was devalued because of the

buffer zone notice being filed, CSHB 1059 would provide that it would be an affirmative defense for the permit holder that a statement had been filed warning potential buyers that the property was located in a buffer zone.

The bill would not put an undue burden on permit holders by requiring that notice be filed with the county deed records. The bill is permissive, allowing permit holders to file notice if they wish.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The original version of the bill would have required permit holders to file notice of a buffer zone. The committee substitute made the filing permissive and added the affirmative defense against property devaluation claims resulting from the filing and the provision that a buffer zone should not be construed as raising environmental and health and safety concerns or suggesting adverse effects. The substitute would apply to property located in a buffer zone if any part of an entire tract of property is located there, while the original version would have only applied to an entire tract of property located within a buffer zone. The substitute added buffer zones related to radioactive and nuclear waste and that the filing provision did not apply if the property located in a buffer zone is owned by the permit holder.