

SUBJECT: Increasing criminal penalties for illegal dumping

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Dukes, Geren, Howard, Zbranek

1 nay — Uher

3 absent — Bonnen, Kuempel, Bosse

WITNESSES: For — Tom Collins, City of Houston; Bob Gregory, Texas Chapter of National Solid Wastes Management Association, Texas Disposal System; Roger Haseman, Harris County District Attorney's Office; Brian Sledge, Lone Star Chapter, Solid Waste Association of North America

Against — none

BACKGROUND: Health and Safety Code, sec. 365.012 establishes misdemeanor criminal penalties for the illegal disposal of litter or other solid waste. A person commits an offense if they:

- ! dispose, allow, or permit the disposal of litter or other solid waste at a place that is not an approved solid waste site;
- ! receive litter or other solid waste for disposal at a place that is not an approved solid waste site; or
- ! transport litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

DIGEST: CSHB 631 would increase the penalties for illegal dumping, most notably creating a state-jail felony offense (180 days to two years in a state jail and an optional fine of up to \$10,000) for large-scale illegal dumping.

The bill would make it a class C misdemeanor (maximum fine of \$500) to illegally dispose of litter or other solid waste that weighs five (reduced from 15 under current law) pounds or less or had a volume of five (reduced from 13) gallons or less. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the litter or other solid waste

weighed between five (reduced from 15) and 500 pounds or had a volume of more than five (reduced from 13) gallons but less than 100 cubic feet. A class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) would be committed if:

- ! the litter or other solid waste weighed between 500 and 1,000 pounds (rather than 500 pounds or more) or had a volume of between 100 and 200 cubic feet (rather than 100 cubic feet or more); or
- ! the litter or other solid waste was disposed of for a commercial purpose and weighed between five and 200 pounds (rather than more than five pounds) or had a volume of more than five gallons but less than 200 cubic feet (rather than more than 13 gallons).

Illegal disposal of litter or other solid waste would be a state-jail felony if the litter or other solid waste:

- ! weighed 1,000 pounds or more or had a volume of 200 cubic feet or more;
- ! was disposed of for a commercial purpose and weighed 200 pounds or more or had a volume of 200 cubic feet or more; or
- ! was contained in a closed drum barrel.

An illegal disposal of litter or other solid waste offense could be prosecuted without alleging or proving any culpable mental state, unless the offense was a state jail penalty.

This act would take effect September 1, 2001. It would not apply to an offense of which any element occurred before September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 631 would help deter large-scale illegal dumping by making it a state-jail felony. Illegal dumping is increasing across the state. In some cases, dumpers have left over 50,000 pounds of waste; in fact, entire houses have been found discarded at dump sites. Dump sites in Houston often contain thousands of tires — a commonly dumped item — that the city must pay to clean up at a cost of \$16 per tire. Many commercial operations responsible for dumping would rather risk bearing the relatively minor penalty under current law than pay for the proper disposal of their waste.

CSHB 631 would help level the playing field for businesses that properly dispose of waste. Legitimate businesses currently are at a competitive disadvantage against businesses that illegally dump. Illegal operations can submit lower bids on contracts by scrimping on waste disposal costs or earn excess profit by charging customers for waste disposal and then illegally dumping the waste.

CSHB 631 would not impose overly harsh penalties for illegal dumping. It would preserve a range of penalties based on the volume of the waste illegally dumped, reserving the toughest penalty — a state jail felony — for those who intentionally dumped large amounts of waste illegally for a commercial purpose. State jail felonies are the most minor of felony offenses. Convicted offenders would serve in state jails rather than state prisons. The state jail system is designed to handle non-violent and property offenses of this sort.

OPPONENTS
SAY:

CSHB 631 would make an unnecessary leap from misdemeanor to felony penalties for dumping offenses. A felony penalty would be inappropriate for dumping violations. These types of offenses are better handled in misdemeanor courts. In addition, lowering the lowest offense thresholds to five pounds or five gallons of litter or other waste could penalize citizens for improperly disposing of minor household garbage.

CSHB 631 also would criminalize people who did not intend to commit a crime. By not requiring a culpable mental state to prosecute misdemeanor illegal dumping offenses, people who were unaware of legal restrictions could be prosecuted for unknowingly disposing of waste in an illegal manner.

NOTES:

The substitute differs from the original version by adding litter or solid waste illegally disposed of for a commercial purpose and weighing 200 pounds or more or having a volume of 200 cubic feet or more or litter or other solid waste contained in a drum barrel to the provisions qualifying for a state jail felony. The substitute also would limit to misdemeanor offenses prosecution of litter and other solid waste offenses without alleging or proving a culpable mental state.