

BILL ANALYSIS

C.S.H.B. 4286
By: Hunter
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Untreated sewage is a proven hazard to human health and the environment. The Texas Water Code currently prohibits the disposal of sewage by boats on certain inland waters of the state. Under the current Texas Water Code and Texas Parks and Wildlife Code, the discharge of boat sewage is regulated on only 25 designated inland lakes that provide fresh water to local municipalities and on Clear Lake, a brackish water lake south of Houston. The discharge of "treated" boat sewage is permitted on all other inland fresh water lakes and reservoirs, and all river systems estuaries and coastal bays.

C.S.H.B. 4286 expands the areas covered by the prohibition against boat sewage disposal to include all inland waters of the state and to coastal waters up to three nautical miles from shore. C.S.H.B. 4286 requires the Texas Commission on Environmental Quality (TCEQ) to issue rules concerning the disposal of sewage from boats located on or operated on the water of the state, specifies provisions to be included in the rules, and authorizes, under certain circumstances, a marine safety enforcement officer to board a boat for the purpose of inspecting and testing certain marine sanitation devices.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1, chapter 382, Health and Safety Code, Subchapter K, Section 382.502 (a), Section 382.505 (b), and 382.506 (a) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 26.044(a), (b), (c), (d) and (f), Water Code. (a) Amends the definition of "boat" to refer to surface water, rather than water, and adds definitions of "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state."

(b) Provides the rules of the commission concerning the disposal of sewage shall apply to the disposal of sewage from boats located or operated on surface water in the state. Also provides the rules of the commission requiring the certification of sewage disposal devices include shoreside and mobile boat pump-out stations. Also provides the rules of the commission requiring the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device be required on each shoreside and mobile pump-out device.

(c) Authorizes the commission to delegate the administration of the certification function to another governmental entity that has appropriate registration and law enforcement capabilities. The section provides that the commission or a delegated authority shall collect certain fees from applicants for certification. The section also titles a category of such fees as "Boat Pump-out Station" and provides that such fees for Boat Pump-out Station shall be biennial. The section also requires all certification fees be paid to the commission or delegated authority performing the certification function and requires all fees collected by any state agency be deposited to the water resource management account for use by the commission or delegated authority.

(d) Provides that before issuing any rules under Subsection(b), the commission or any person authorized by it under Section 26.021 (Delegation of Hearing Powers), on request,

is permitted to hold hearings on those rules in Austin and in five other locations in the state.

(f) Requires copies of each rule issued by the commission under this section be posted on the commission's Internet website as well as be filed in the Austin offices of the commission and the Austin office of the secretary of state. Strikes the requirement that copies of each rule issued by the commission be filed with the office of the county clerk in each county of the state.

SECTION 2. Amends Sections 26.045(a), (b) and (c), Water Code. (a) Provides that "boat," "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state" have the meanings assigned by Section 26.044(a) and strikes those definitions under Section 26.045(a).

(b) Authorizes the commission, after a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on the surface water in the state, to enter an order requiring the establishment of boat pump-out stations by a local government with jurisdiction over at least a portion of the surface water in the state or over land immediately adjacent to the water.

(c) Provides that a local government authorized to issue authorization for the operation of shoreside, mobile or floating installations may require the installation and operation of boat pump-out stations where necessary.

SECTION 3. Amends the heading to Section 31.129, Parks and Wildlife Code, to read "VIOLATION AND ENFORCEMENT OF SEWAGE DISPOSAL REGULATIONS."

SECTION 4. Amends Section 31.129, Parks and Wildlife Code, by amending Subsection (a) and adding Subsections (c) and (d). (a) Provides that a person who violates or fails to comply with a rule of the Texas Commission on Environmental Quality concerning the disposal of sewage from boats commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(c) Authorizes a game warden or peace officer who is certified as a marine safety enforcement officer under Section 31.121 (Enforcement Officers) to enforce a rule of TCEQ concerning the disposal of sewage from boats.

(d) Authorizes a marine safety enforcement officers who reasonably suspects that a boat is discharging sewage in an area where discharge is prohibited, if the owner or operator is aboard, to board the boat for the purpose of inspecting the marine sanitation device for proper operation and testing the sanitation and holding devices, including placing a dye tablet in the holding tank.

SECTION 5. Effective date.

EFFECTIVE DATE

September 1, 2009

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. C.S.H.B. 4286 differs from the original in Section 26.044(a) by adding (a)(1), (a)(2), (a)(3) and (a)(4) to amending the definition of "Boat" to refer to surface water, rather than water, and to add the definitions of "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state."

The substitute differs from the original in Section 26.044(b) by providing the rules of the commission concerning the disposal of sewage shall apply to the disposal of sewage from boats located or operated on surface water, rather than on water, in the state. The substitute also differs from the original by providing the rules of the commission requiring the certification of sewage disposal devices include shoreside and mobile boat pump-out stations, rather than on-shore pump-out facilities. The substitute also differs from the original by providing the rules of the

commission requiring the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device be required on each shoreside and mobile pump-out device, rather than on each on-shore pump-out device.

The substitute differs from the original in Section 26.044(c) by providing the commission or delegated authority shall collect "the following fees", rather than "fees", from applicants for certification and titles a category of such fees "Boat Pump-out Station" rather than "Boat Certificates." The substitute also differs from the original by requiring all certification fees be paid to the commission or delegated authority, rather than to the entity, performing the certification function and by requiring all fees collected by any state agency be deposited to the credit of the water resource management account, rather than the clean boating account, for use by the commission or delegated authority.

The substitute differs from the original in Section 26.044(f) by restoring language requiring the commission to provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and to furnish the county judge in each county of the state a copy of the rules.

SECTION 2. C.S.H.B. 4286 differs from the original in Section 26.045(a) by providing that, in the section, "boat," "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state" have the meaning assigned by Section 26.044 and by striking Sections 26.045(a)(1), (a)(2), (a)(3) and (a)(4). C.S.H.B. 4286 differs from the original in Section 26.045(b) by allowing the commission to enter an order requiring local governments with jurisdiction over a portion of the surface water in the state, rather than water of the state, to establish boat pump-out stations.

SECTION 3. C.H.S.B. 4286 differs from the original by striking language that amended Subchapter B, Chapter 26, Water Code to add Sections 26.0451 (CLEAN BOATING ACCOUNT) and 26.0452 (POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE) and by renumbering the remaining sections of the bill accordingly.

SECTION 4. C.S.H.B. 4286 differs from the original by adding the testing of sanitation and holding devices to the purpose for which a marine safety officer may, if the owner or operator is aboard, board a boat the officer reasonably suspects is discharging sewage in an area where discharge is prohibited.

SECTION 5. No change from the original.