

BILL ANALYSIS

C.S.H.B. 824
By: Callegari
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

An accidental discharge or spill, such as a sanitary sewer overflow, that occurs at or from any activity or facility which causes or may cause pollution is currently required to be reported to the Texas Commission on Environmental Quality (TCEQ) and, in certain cases, to local government officials and local media. Interested parties note that an informal survey of Texas utilities indicates that a large percentage of reported spills are less than 1,500 gallons and that the majority of such spills do not reach waters of the state or cause an environmental impact. These parties contend that the requirement to report accidental discharges or spills regardless of size creates a reporting burden for public utilities as well as an information management burden for TCEQ. This level of reporting also has the potential to mislead the public into thinking that a serious public health and safety issue exists every time an unauthorized discharge or spill is reported. C.S.H.B. 824 seeks to remedy this situation by creating an exemption from the reporting requirement for certain accidental sanitary sewer overflows.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 824 amends the Water Code to exempt an individual from requirements to notify the Texas Commission on Environmental Quality (TCEQ), local government officials, and local media of certain accidental polluting or potentially polluting discharges or spills occurring at or from any activity or facility the individual is operating, is in charge of, or for which the individual is responsible if the accidental discharge or spill is a sanitary sewer overflow that is 1,000 gallons or less and is controlled or removed before the overflow enters water in Texas and before the overflow adversely affects a public or private source of drinking water. The bill expands the requirement for TCEQ by rule to specify both the conditions under which an individual must comply with the requirement to notify local government officials and local media of an accidental discharge or spill and the procedures for such notice to include specifying by that rule the conditions and procedures for complying with the requirement to notify TCEQ of such a discharge or spill. The bill requires TCEQ, not later than December 1, 2013, to adopt rules necessary to implement the bill's provisions and specifies that its provisions apply only to an offense committed on or after the effective date of such a rule.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 824 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 26.039, Water Code, is amended by amending Subsections (b), (e), and (f) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), whenever [Whenever] an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.

(b-1) The individual is not required to notify the commission under Subsection (b) if an accidental discharge or spill of 1,500 gallons or less from a wastewater treatment facility or works or collection facility does not reach waters of the state.

(e) If an accidental discharge or spill described by Subsection (b) of more than 1,500 gallons from a wastewater treatment facility or works or collection facility owned or operated by a local government may adversely affect a public or private source of drinking water, the individual shall also notify appropriate local government officials and local media.

(f) The commission by rule shall specify the conditions under which an individual must comply with Subsection (b), subject to Subsection (b-1), and with Subsection (e) and prescribe procedures for giving the required notice. The rules must also state the content of the notice and the manner of giving notice. In formulating the rules, the commission shall consider:

- (1) the nature and extent of the discharge or spill;
- (2) the potential effect of the discharge or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 26.039, Water Code, is amended by amending Subsections (b) and (f) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), whenever [Whenever] an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.

(b-1) The individual is not required to notify the commission under Subsection (b) or local government officials or local media under Subsection (e) of a sanitary sewer overflow, as defined by Section 26.049, that is:

- (1) 1,000 gallons or less; and
- (2) controlled or removed:
 - (A) before the overflow enters water in the state; and
 - (B) before the overflow adversely affects a public or private source of drinking water.

No equivalent provision.

(f) The commission by rule shall specify the conditions under which an individual must comply with Subsections (b) and [Subsection] (e) and prescribe procedures for giving the required notice. The rules must also state the content of the notice and the manner of giving notice. In formulating the rules, the commission shall consider:

- (1) the nature and extent of the discharge or spill;
- (2) the potential effect of the discharge or

spill; and

(3) regional information about the susceptibility of a particular drinking water source to a specific type of pollution.

SECTION 2. (a) Not later than December 1, 2013, the Texas Commission on Environmental Quality shall adopt rules necessary to implement Section 26.039, Water Code, as amended by this Act.

(b) The change in law made by this Act applies only to an offense committed on or after the effective date of a rule adopted by the Texas Commission on Environmental Quality under this section. For purposes of this section, an offense was committed before the effective date of a rule adopted by the Texas Commission on Environmental Quality under this section if any element of the offense occurred before that date.

(c) An offense committed before the effective date of a rule adopted by the Texas Commission on Environmental Quality under this section is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

spill; and

(3) regional information about the susceptibility of a particular drinking water source to a specific type of pollution.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.