

SUBJECT: Consolidating TNRCC enforcement and emergency powers

COMMITTEE: Environmental Regulation — favorable, with amendment

VOTE: 8 ayes — Chisum, Jackson, Allen, Hirschi, Howard, Kuempel, Puente, Talton

0 nays

1 absent — Dukes

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: No public hearing.

DIGEST: SB 1876, as amended, would consolidate certain authorities granted the Texas Natural Resource Conservation Commission (TNRCC). The bill would combine enforcement penalties into a single chapter of the Water Code, consolidate TNRCC authority to issue emergency and temporary orders into a new subchapter of the code, make language consistent throughout different programs wherever possible, create two tiers of maximum penalty authority for administrative and civil penalties, and reduce the number of provisions providing different criminal penalty ranges.

General enforcement authority. SB 1876 would establish TNRCC general enforcement authority for numerous programs, including air, water, waste, and drinking water, and would require the commission to report at least once a month on enforcement actions taken and the resolution of those actions. The report would be an item for commission discussion at any commission meeting for which public notice was given.

Remedies under the new enforcement chapter would be cumulative to all other remedies. Consolidation of enforcement powers would not affect the right of a private corporation or individual to pursue common law remedies to abate pollution or recover damages to enforce a right or to seek redress or compensation for the violation of a right. The bill would provide for consistency in corrective action provisions. It also would specify general injunctive relief provisions.

Consolidation of emergency and temporary orders. The bill would consolidate TNRCC authority to issue emergency and temporary orders into a new subchapter of the Water Code, deleting existing emergency and temporary order statutes where they are currently found throughout the Water Code and the Health and Safety Code. The commission would be given explicit authority to delegate to its executive director authority to issue every kind of emergency order.

A permit could be issued under an emergency order without a hearing unless the law under which the commission acted specifically required notice of an emergency order. Otherwise, emergency orders would be issued after providing notice and opportunity for a hearing that the commission considered practicable under the circumstances. Administrative Procedure Act requirements would not apply to an emergency order issued without hearing.

In general, emergency or temporary orders would be limited to a reasonable time specified by the order, but could not exceed 180 days and could be renewed only once for another 180-day period. The bill would also establish statutory provisions governing applications for emergency or temporary orders and for hearings to affirm, modify or set aside orders.

Penalties and offenses. The bill would provide two tiers of administrative penalties and two tiers of civil penalties for various programs, including air, water, waste, and drinking water. Current penalties would be increased or decreased to fit into the penalty scheme; most would increase. The maximum administrative penalty for enforcement of programs typically governing smaller operators would be \$2,500 per day per violation; the maximum penalty for enforcement of all other programs would be \$10,000 per day per violation. The civil penalty for enforcement of programs typically governing smaller operators would be no less than \$50 nor greater than \$5,000 per day per violation; the penalty for enforcement of all other programs would be no less than \$50 nor greater than \$25,000 per day per violation.

SB 1876 would combine 23 existing criminal penalty ranges into seven new penalty ranges but would propose no change to existing offenses or terms of confinement required for those offenses. Defenses to various violation

would also be consolidated by the bill, and affirmative defenses would apply to all enforcement proceedings.

Other provisions. The bill would establish general provisions concerning the commission's authority to revoke, suspend or reissue certain permits, licenses and registrations and would consolidate the grounds upon which the commission could take such actions.

SB 1876 also would consolidate statutory provisions concerning civil suits by local governments and affected persons.

Effective date. The bill would take effect September 1, 1997. Its provisions pertaining to the processing and disposal of by-product materials would have no effect if SB 1857 or any other bill transferring jurisdiction of certain radioactive by-product material from uranium mines from the TNRCC to the Texas Department of Health were enacted.

NOTES:

The committee amendment would make various technical corrections, remove two sections concerning affirmative defenses to hazardous waste endangerment and suspensions or revocations of certificates of convenience and necessity, and add an exception to the effective date of the bill concerning SB 1857.

SB 1857 by Brown, transferring jurisdiction over certain uranium by-products from the TNRCC to TDH, passed the House on second reading on May 26.

SB 1874 by Bivins, which would consolidate TNRCC's authorization for emergency and temporary orders in one subchapter of the Water Code, is included in SB 1876. SB 1874 was placed on the General State Calendar for May 26.

