

SUBJECT: Amending civil suit procedures for violations against TCEQ rules

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Price, Workman

1 nays — Lucio

1 absent — Nevárez

WITNESSES: For — Stephen Minick, Texas Association of Business; Nelson Roach, TTLA; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum; Jon Fisher, Associated Builders and Contractors of Texas; Carolyn Brittin, Associated General Contractors, Highway, Heavy, Utilities and Industrial Branch; Jason Winborn, AT&T; Paula Barnett, BP America; Mark Harmon, Chesapeake Energy; Julie Williams and Steve Perry, Chevron; Martin Hubert, Citgo; Tom Sellers, ConocoPhillips; Gavin Massingill, Denbury Resources; Daniel Womack, Dow Chemical; Bill Oswald, Koch Companies; Lisa Hobbs, Texans for Lawsuit Reform; Stephanie Simpson, Texas Association of Manufacturers; Martha Landwehr, Texas Chemical Council; Mari Ruckel, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Tricia Davis, Texas Royalty Council; Jay Brown, Valero Energy Corporation)

Against — Cyrus Reed, Lone Star Chapter Sierra Club; Phillip Goodwin, City of Houston Mayor's Office; John Dahill, Texas Conference of Urban Counties; Ryan Fite, Travis County Attorney's Office; (*Registered, but did not testify:* Tom Tagliabue, City of Corpus Christi, Corpus Christi Aquifer Storage and Recovery Conservation District; Sally Bakko, City of Galveston; James McCarley, City of Plano; Claudia Russell, El Paso County; Sandra Haverlah, Environmental Defense Fund; Myron Hess, National Wildlife Federation; Carol Birch, Public Citizen; Kelly Davis, Save Our Springs Alliance; Mark Mendez, Tarrant County; Rick Thompson, Texas Association of Counties; Elizabeth Doyel, Texas League of Conservation Voters; Steven Hernandez)

On — Bill Longley, Texas Municipal League; (*Registered, but did not testify*: Craig Pritzlaff and Patrick Sweeten, Office of the Attorney General; Donna Warndorf, Harris County Commissioners Court; Caroline Sweeney, Texas Commission on Environmental Quality)

BACKGROUND: Water Code, sec. 7.351 allows a local government to institute a civil suit in the same manner as the Texas Commission on Environmental Quality (TCEQ) in a district court by its own attorney for the injunctive relief, civil penalty, or both against a person who committed or threatens to commit a violation of certain rules or laws overseen by TCEQ. An affected person also may bring suit in this manner for a violation related to nuclear or radioactive materials.

Sec. 7.357 allows a local government to bring suit in the county in which an alleged violation occurred if TCEQ does not have a suit filed within 121 days of the date a written complaint is filed.

DIGEST: CSHB 2533 would require a local government or affected person to provide the attorney general and executive director of the Texas Commission on Environmental Quality (TCEQ) written notice of alleged violations before instituting a claim against a person who violated certain rules and regulations under TCEQ, as well as the specific relief sought and the facts supporting the claim.

A local government or affected person could institute a civil suit at least 90 days after the agencies received the notice unless TCEQ or the attorney general commenced a proceeding or civil suit concerning at least one of the alleged violations before that time.

If a local government or affected person discovered a violation that was within 120 days of the expiration of the statute of limitations, it could institute a civil suit at least 45 days after the agencies received the notice, unless the attorney general commenced a civil suit before that time. Notice would have to be provided by certified mail or hand delivered to the chief of the division of the attorney general's office responsible for

environmental claims for this reduced notice and review period.

The bill would repeal Water Code, sec. 7.357.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to a violation that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 2533 would reduce unnecessary and redundant environmental enforcement actions brought by local governments by allowing the state to review proposed local action before proceeding. The state should take the lead on these actions because city and county actions can be contrary to statewide enforcement policies.

Local governments still could institute a suit if the attorney general or TCEQ declined to bring a suit. The bill also would shorten the notice and review period to 45 days for violations that face an expiring statute of limitations, allowing cities and counties to respond more quickly.

**OPPONENTS
SAY:**

CSHB 2533 would prevent cities and counties from responding quickly to emerging local environmental problems by requiring them to submit notice of violations to the attorney general and TCEQ before proceeding. Assistance from local governments also would allow state resources to be utilized more efficiently.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have a positive impact of \$362,000 through fiscal 2018-19.

The committee substitute differs from the bill as filed by:

- repealing language allowing the attorney general or executive director of TCEQ to deny a request to pursue a civil suit; and
- reducing the approval period to 45 days after a notice is received for alleged violations within 120 days of the statute of limitations.