

BILL ANALYSIS

Senate Research Center

S.B. 1876
By: Bivins
Natural Resources
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DIGEST

Currently, the enforcement authority of the Texas Natural Resource Conservation Commission (TNRCC) is located in many different sections of the Water Code and the Health and Safety Code. In the past, various regulatory bodies have had jurisdiction over what is now essentially TNRCC's responsibility. As a result, provisions for enforcement actions within TNRCC's jurisdiction are inconsistent, with a potential for inequity in the process. Consolidation would provide a consistency that would expedite rulemaking in enforcement matters and eliminate the need for evaluating the subtle language differences that currently exist. In addition, by consolidating and simplifying TNRCC's enforcement penalties, the public will be better able to determine and understand penalties imposed on polluters. This bill will consolidate the enforcement authority of the Texas Natural Resource Conservation Commission.

PURPOSE

As proposed, S.B. 1876 consolidates all enforcement authority of the Texas Natural Resource Conservation Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTION 2 (Section 7.203, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealers: (a) Repeals the following provisions of the Water Code: Sections 11.082, 11.095, 11.139, 11.148, 12.141, 13.411, 13.412, 13.413, 13.4131, 13.4132, 13.4133, 13.414, 13.415, 13.4151, 13.416, 13.417, 13.418, 13.419, 13.505, 16.352, 16.353, 16.354, 16.356, 18.121, 18.171, 18.172, 26.016, 26.020, 26.122, 26.123, 26.124, 26.125, 26.126, 26.132, 26.133, 26.136, 26.134, 26.211, 26.212, 26.2121, 26.2125, 26.2126, 26.213, 26.214, 26.216, 26.217, 26.218, 26.219, 26.220, 26.221, 26.222, 26.223, 26.224, 26.225, 26.226, 26.227, 26.268, 26.459, 26.460, 27.101, 27.1011, 27.1012, 27.1013, 27.1014, 27.1015, 27.102, 27.103, 27.104, 27.105, 28.013, 28.061, 28.062, 28.063, 28.064, 28.065, 28.066, 28.067, 31.019, 32.010, 32.011, 32.012, 32.015, 33.008, 33.009, 33.010, 33.013, 34.010, 34.011, 34.012, 34.013, 34.014.

(b) Repeals the following provisions of the Health and Safety Code: Sections 341.047, 341.048, 341.049, 341.050, 341.091, 341.092, 361.164, 361.160, 361.198, 361.221, 361.2215, 361.222, 361.2225, 361.2226, 361.223, 361.224, 361.225, 361.226, 361.227, 361.228, 361.229, 361.230, 361.231, 361.232, 361.233, 361.234, 361.235, 361.251, 361.252, 361.272, 361.273, 361.274, 361.275, 361.280, 361.301, 361.302, 361.303, 361.455, 361.456, 361.483, 361.4831, 361.4832, 361.489, 361.491, 361.540, 361.560, 361.562, 361.5625, 361.563, 361.564, 361.565, 361.566, 361.567, 366.015, 366.016, 366.077, 366.091, 366.092, 366.0921, 366.0922, 366.0923, 366.0924, 366.093, 370.009, 371.041, 371.042, 371.043, 371.044, 371.045, 372.004, 372.005, 382.005, 382.026, 382.059, 382.081, 382.083, 382.084, 382.086, 382.087, 382.088, 382.089, 382.090, 382.091, 382.092, 382.093, 382.094, 382.095, 382.096, 382.114, 401.056, 401.342, 401.381, 401.382, 401.383, 401.384, 401.385, 401.386, 401.387, 401.388, 401.389, 401.390, 401.391, 401.392.

SECTION 2. Amends Title 2A, Water Code, by adding Chapter 7, as follows:

SUBCHAPTER A. ENFORCEMENT AUTHORITY

Sec. 7.001. AUTHORITY. Sets forth the authority of the Texas Natural Resource Conservation Commission (TNRCC) to initiate an action under this subchapter.

Sec. 7.002. ENFORCEMENT REPORT. Sets forth requirements of an enforcement report to be prepared by TNRCC.

SUBCHAPTER B. EMERGENCY AND TEMPORARY ORDERS; CORRECTIVE ACTION; INJUNCTIVE RELIEF

Sec. 7.011. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS. Sets forth regulations regarding the issuance of temporary or emergency mandatory, permissive, or prohibitory orders, permits by temporary or emergency order and the temporary suspension or amendment of permit conditions by temporary or emergency order of TNRCC.

Sec. 7.012. EMERGENCY PERMITS FOR DIVERSION AND USE OF WATER. Authorizes TNRCC, by emergency order, to grant an emergency permit for the diversion and use of water if TNRCC makes certain findings.

Sec. 7.013. EMERGENCY SUSPENSION OF PERMIT CONDITIONS RELATING TO BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES. Sets forth regulations regarding the suspension, by temporary or emergency order of TNRCC, of permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses.

Sec. 7.014. EMERGENCY WORKS SAFETY ORDERS. Authorizes TNRCC to issue an emergency order, either mandatory or prohibitory, directing certain persons to repair, modify, maintain, dewater, or remove a work if TNRCC makes certain findings.

Sec. 7.015. EMERGENCY ORDERS TO COMPEL WATER OR SEWER SERVICE. Sets forth regulations regarding issuance of an emergency order by TNRCC to compel water or sewer service.

Sec. 7.016. EMERGENCY ORDERS FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. Authorizes TNRCC to issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132 if notice is mailed or hand-delivered to the last known address of the utility's headquarters.

Sec. 7.017. EMERGENCY ORDERS FOR RATE INCREASES IN CERTAIN SITUATIONS. Authorizes TNRCC, notwithstanding the requirements of Section 13.187, to authorize an emergency rate increase for a utility for which a person has been appointed under Section 7.016 or Section 13.4132 or for which a receiver has been appointed under Section 13.412 if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

Sec. 7.018. TEMPORARY AND EMERGENCY ORDERS AND AUTHORIZATIONS TO DISCHARGE UNTREATED OR PARTIALLY TREATED WATER. Sets forth regulations regarding the issuance of temporary and emergency orders and authorizations to discharge untreated or partially treated water.

Sec. 7.019. EMERGENCY ORDERS CONCERNING UNDERGROUND OR ABOVE-GROUND STORAGE TANKS. Sets forth regulations regarding emergency orders concerning underground or above-ground storage tanks.

Sec. 7.020. EMERGENCY ADMINISTRATIVE ORDERS TO PERSONS

RESPONSIBLE FOR SOLID WASTE. Authorizes TNRCC or the executive director to issue emergency administrative orders under Sections 361.272 and 361.274, Health and Safety Code.

Sec. 7.021. EMERGENCY ORDERS CONCERNING ACTIVITIES OF SOLID WASTE MANAGEMENT. Authorizes TNRCC to issue an emergency order concerning an activity of solid waste management under its jurisdiction, even if that activity is not covered by a permit, if it finds that an emergency requiring immediate action to protect the public health and safety exists.

Sec. 7.022. ORDERS ISSUED UNDER AIR EMERGENCIES. Sets forth regulations regarding orders issued under air emergencies.

Sec. 7.023. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. Sets forth regulations regarding the issuance of emergency orders because of a catastrophe.

Sec. 7.024. EMERGENCY ORDERS UNDER SECTION 401.056, HEALTH AND SAFETY CODE. Authorizes TNRCC to issue an emergency order under Section 401.056, Health and Safety Code, in the manner provided in this subchapter.

Sec. 7.025. EMERGENCY ORDERS FOR CORRECTIVE ACTION AND MEASURES. Sets forth regulations regarding emergency orders for corrective action and measures.

Sec. 7.026. TEMPORARY EMERGENCY TRANSFER OF USE OF SURFACE WATER RIGHT. Sets forth regulations regarding the temporary emergency transfer of use of a surface water right.

Sec. 7.027. CORRECTIVE ACTION. Sets forth regulations regarding corrective action for a release of hazardous waste or hazardous waste constituents.

Sec. 7.028. INJUNCTIVE RELIEF. Sets forth regulations regarding use of an injunction or other appropriate remedy to enforce a valid TNRCC rule, or any term, condition, or provision of a permit issued by TNRCC.

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

Sec. 7.031. PENALTY FOR VIOLATIONS. Sets forth regulations regarding administrative penalties to be assessed by TNRCC.

Sec. 7.032. MAXIMUM PENALTY. Sets forth regulations regarding the maximum penalty that may be assessed for violations of certain chapters of the Health and Safety Code.

Sec. 7.033. FACTORS. Sets forth factors to be considered by TNRCC in determining the amount of a penalty.

Sec. 7.034. REPORT. Authorizes the executive director, if, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, to issue a preliminary report pursuant to TNRCC rules.

Sec. 7.035. NOTICE OF REPORT. Requires the executive director, not later than the 10th day after the date on which the report is issued, to give written notice of the report to the person charged with the violation pursuant to TNRCC rules.

Sec. 7.036. CONSENT. Authorizes the person charged, not later than the 20th day after the date on which notice is received, to give to TNRCC written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

Sec. 7.037. DEFAULT. Requires TNRCC, by order, to assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report if

the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice. Requires TNRCC, if TNRCC assesses the penalty, to give written notice to the person charged of its decision.

Sec. 7.038. HEARING. Sets forth regulations regarding hearings.

Sec. 7.039. DECISION. Requires TNRCC to give notice of its decision to the person charged, and if TNRCC finds that a violation has occurred and assesses a penalty, to give written notice to the person charged of certain items.

Sec. 7.040. NOTICE OF PENALTY. Requires TNRCC to file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted if TNRCC is required to give notice of the penalty under Section 7.037 or 7.039.

Sec. 7.041. PAYMENT. Sets forth regulations regarding payment of a penalty.

Sec. 7.042. STAYS. Sets forth regulations regarding stay of a penalty.

Sec. 7.043. CONSENT TO AFFIDAVIT. Sets forth regulations regarding consent to an affidavit.

Sec. 7.044. JUDICIAL REVIEW. Requires judicial review of the order or decision of TNRCC assessing the penalty to be under Chapter 2001G, Government Code.

Sec. 7.045. PENALTY REDUCED OR NOT ASSESSED. Sets forth procedures to be followed if the penalty is reduced or not assessed by the court.

Sec. 7.046. REFERRAL TO ATTORNEY GENERAL. Provides that a person who fails to comply with Section 7.041 waives the right to judicial review, and TNRCC or the executive director may refer the matter to the attorney general for enforcement.

Sec. 7.047. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. Sets forth regulations regarding supplemental environmental projects. Defines "supplemental environmental projects."

Sec. 7.048. FULL AND COMPLETE SATISFACTION. Provides that payment under this subchapter is full and complete satisfaction of the violation for which the administrative penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Sec. 7.049. GENERAL REVENUE FUND. Requires a penalty collected under this subchapter to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 7.050. RESERVATIONS. Provides that TNRCC, notwithstanding any other provision to the contrary, is not required to make findings of fact or conclusions of law, other than an uncontested finding that TNRCC has jurisdiction in an agreed order compromising or settling an alleged violation of this chapter. Authorizes an agreed administrative order to include certain reservations.

Sec. 7.051. INADMISSIBILITY. Sets forth admissibility of an agreed administrative order issued by TNRCC under this subchapter.

Sec. 7.052. CIVIL ACTIONS. Authorizes an administrative penalty owed under this section to be recovered in a civil action brought by the attorney general at the request of TNRCC.

Sec. 7.053. CORRECTIVE ACTION. Sets forth corrective actions that TNRCC may take if a person violates a statute or rule within TNRCC's jurisdiction.

Sec. 7.054. SUBPOENA. Authorizes TNRCC, for enforcement matters arising under

Chapter 34, to compel the attendance of witnesses before it as in civil cases in the district court by issuance of a subpoena.

Sec. 7.055. PUBLICATION. Sets forth regulations regarding publication of certain items related to an administrative order or proposed agreement to settle an administrative enforcement action.

SUBCHAPTER D. CIVIL PENALTIES

Sec. 7.071. VIOLATION. Prohibits a person from causing, suffering, allowing, or permitting a violation of a provision of a statute within TNRCC's jurisdiction or a rule, order, permit, license, or certificate adopted under TNRCC's jurisdiction.

Sec. 7.072. MAXIMUM PENALTY. Sets forth the maximum penalty that may be assessed for certain violations.

Sec. 7.073. CONTINUING VIOLATIONS. Sets forth regulations regarding continuing violations.

Sec. 7.074. CIVIL SUIT. Requires the attorney general, on the request of the executive director or TNRCC, to institute a suit in the name of the state for the injunctive relief under Section 7.014 to recover a civil penalty, or for both injunctive relief and a civil penalty. Authorizes the suit to be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat or violation occurs.

Sec. 7.075. RESOLUTION THROUGH ADMINISTRATIVE ORDER. Authorizes the attorney general's office and the executive director to agree to resolve any violations, before or after referral, by an administrative order issued by TNRCC with the approval of the attorney general.

Sec. 7.076. DIVISION OF CIVIL PENALTIES. Sets forth division of a civil penalty recovered in a suit brought under this section.

Sec. 7.077. ATTORNEY'S FEES. Authorizes the state, if it prevails in a suit under this section, to recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 7.078. PARKS AND WILDLIFE DEPARTMENT JURISDICTION. Sets forth jurisdiction of the Parks and Wildlife Department (department).

Sec. 7.079. PUBLICATION. Sets forth regulations regarding an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary settlement agreement.

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

Sec. 7.101. DEFINITIONS. Defines "appropriate regulatory agency," "corporation," "association," "large quantity generator," "medical waste," "person," "serious bodily injury," and "small quantity generator."

Sec. 7.102. VIOLATION OF CHAPTER 13. Provides that a person commits a third degree felony if the person wilfully and knowingly violates Chapter 13.

Sec. 7.103. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE. Sets forth penalties regarding an intentional or knowing unauthorized discharge.

Sec. 7.104. DISCHARGE FROM POINT SOURCE. Sets forth penalties regarding a discharge from a point source.

Sec. 7.105. UNAUTHORIZED DISCHARGE. Sets forth penalties regarding an

unauthorized discharge.

Sec. 7.106. FAILING TO PROPERLY USE POLLUTION CONTROL MEASURES. Sets forth penalties for the failure to properly use pollution control measures.

Sec. 7.107. FALSE STATEMENT. Sets forth penalties for a false statement by a person.

Sec. 7.108. FAILURE TO NOTIFY OR REPORT. Sets forth penalties for a failure to notify or report as required by Chapter 26, or by a rule, permit, or order of the appropriate regulatory agency.

Sec. 7.109. FAILURE TO PAY FEE. Sets forth penalties for failure to pay a fee.

Sec. 7.110. VIOLATION RELATING TO KNOWING OR INTENTIONAL UNAUTHORIZED DISCHARGE AND ENDANGERMENT. Sets forth penalties for a violation relating to a knowing or intentional unauthorized discharge which thereby places a person in imminent danger of death or serious bodily injury.

Sec. 7.111. VIOLATION RELATING TO UNAUTHORIZED DISCHARGE AND INTENTIONAL OR KNOWING ENDANGERMENT. Sets forth penalties for a violation relating to an unauthorized discharge which thereby places another person in danger of death or serious bodily injury.

Sec. 7.112. VIOLATION RELATING TO RECKLESS UNAUTHORIZED DISCHARGE AND ENDANGERMENT. Sets forth penalties for a violation relating to reckless unauthorized discharge and endangerment.

Sec. 7.113. VIOLATION RELATING TO INJECTION WELLS. Sets forth penalties for a violation relating to injection wells.

Sec. 7.114. VIOLATION RELATING TO WATER WELLS AND DRILLED OR MINED SHAFTS. Sets forth penalties for a violation relating to water wells and drilled or mined shafts.

Sec. 7.115. VIOLATIONS RELATING TO PUBLIC DRINKING WATER AND WATER SUPPLIES. Sets forth penalties for violations relating to public drinking water and water supplies.

Sec. 7.116. VIOLATIONS RELATING TO HAZARDOUS WASTE. Sets forth penalties for violations relating to hazardous waste.

Sec. 7.117. VIOLATIONS RELATING TO MEDICAL WASTE: LARGE GENERATOR. Sets forth penalties for violations relating to medical waste by a person who is a large quantity generator.

Sec. 7.118. VIOLATIONS RELATING TO MEDICAL WASTE: SMALL GENERATOR. Sets forth penalties for violations relating to medical waste by a person who is a small quantity generator.

Sec. 7.119. VIOLATIONS RELATING TO MEDICAL WASTE TRANSPORTATION. Sets forth penalties for violations relating to medical waste transportation.

Sec. 7.120. KNOWING VIOLATIONS RELATING TO MEDICAL WASTE. Sets forth penalties for knowing violations relating to medical waste

Sec. 7.121. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND ENDANGERMENT. Sets forth penalties for intentional or knowing violations relating to medical waste and endangerment.

Sec. 7.122. INTENTIONAL OR KNOWING ENDANGERMENT VIOLATION RELATING TO MEDICAL WASTE. Sets forth penalties for intentional or knowing endangerment violations relating to medical waste.

Sec. 7.123. RELEASE OF MEDICAL WASTE INTO ENVIRONMENT. Sets forth penalties for the release of medical waste into the environment.

Sec. 7.124. RECKLESS RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT. Sets forth penalties for the reckless release of medical waste into the environment thereby endangering another person.

Sec. 7.125. FAILURE OF SEWAGE SYSTEM INSTALLER TO REGISTER. Sets forth penalties for failure of a sewage system installer to register.

Sec. 7.126. VIOLATION RELATING TO SEWAGE DISPOSAL NEAR INTERNATIONAL BORDER. Sets forth penalties for a violation relating to sewage disposal near an international border.

Sec. 7.127. VIOLATION OF SEWAGE DISPOSAL SYSTEM PERMIT PROVISIONS. Sets forth penalties for violations of sewage disposal system permit provisions.

Sec. 7.128. HANDLING USED OIL VIOLATIONS. Sets forth penalties for violations relating the handling of used oil.

Sec. 7.129. VIOLATIONS OF CLEAN AIR ACT. Sets forth penalties for violations of the Clean Air Act (CAA).

Sec. 7.130. FAILURE TO PAY FEES UNDER CLEAN AIR ACT. Sets forth penalties for failure to pay fees under CAA.

Sec. 7.131. FALSE REPRESENTATION UNDER CLEAN AIR ACT. Sets forth penalties for false representation under CAA.

Sec. 7.132. FAILURE TO NOTIFY UNDER CLEAN AIR ACT. Sets forth penalties for a failure to notify under CAA.

Sec. 7.133. FAILURE TO PROPERLY USE MONITORING DEVICE. Sets forth penalties for a failure to properly use a monitoring device.

Sec. 7.134. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT. Sets forth penalties for a reckless emission of an air contaminant which thereby endangers another person.

Sec. 7.135. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND ENDANGERMENT. Sets forth penalties for an intentional or knowing emission of an air contaminant which thereby endangers another person.

Sec. 7.136. VIOLATIONS RELATING TO RADIOACTIVE WASTE. Sets forth penalties for violations relating to radioactive waste.

Sec. 7.137. SEPARATE OFFENSES. Provides that each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Sec. 7.138. FINES. Sets forth fines to be paid by a person convicted of an offense under this subchapter.

Sec. 7.139. CONFINEMENT. Sets forth periods of confinement for a person convicted of an offense under this chapter.

Sec. 7.140. REPEAT OFFENSES. Provides that, if it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the offense in Sections 7.102-7.136 specifies otherwise.

Sec. 7.141. VENUE. Sets forth venue for prosecution of an alleged violation under this subchapter.

Sec. 7.142. FINES FOR STATE AND LOCAL PROSECUTION. Sets forth regulations regarding fines recovered through prosecution brought under this subchapter.

Sec. 7.143. NOT AN OFFENSE. Provides that an emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(c), Health and Safety Code, is not an offense under this section if a written statement describing the need for the repair is provided to TNRCC or its authorized agency not later than 72 hours after the repair is begun.

Sec. 7.144. NOTICE OF CONVICTION. Authorizes a person other than an individual that has been adjudged guilty of an offense to be ordered by the court to give notice of the conviction to any person the court considers appropriate in addition to a sentence that may be imposed under this subchapter.

Sec. 7.145. JUDGMENT OF CONVICTION. Requires the clerk of the court in which a conviction is returned to forward a copy of the judgment to TNRCC upon conviction under this subchapter.

Sec. 7.146. PEACE OFFICERS. Provides that, for purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. Provides that these agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure.

Sec. 7.147. ALLEGATIONS. Provides that, in alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. Provides that it is not necessary to allege that the defendant was lawfully incorporated.

Sec. 7.148. SUMMONS AND ARREST. Sets forth regulations regarding summons and arrest after a complaint is filed or an indictment or information presented against a private corporation.

Sec. 7.149. SERVICE OF SUMMONS. Sets forth regulations regarding the service of a summons on a private corporation.

Sec. 7.150. ARRAIGNMENT AND PLEADINGS. Provides that, in all criminal actions instituted against a private corporation under the provisions of this subchapter appearance is for the purpose of arraignment and the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Sec. 7.151. APPEARANCE. Sets forth regulations regarding appearance at the arraignment and trial.

Sec. 7.152. FINE TREATED AS JUDGMENT IN CIVIL ACTION. Requires a fine, if a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed, to be entered and docketed by the clerk of the court as a judgment against the person, and to be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action.

Sec. 7.153. EFFECT ON CERTAIN OTHER LAWS. Authorizes conduct punishable as an offense under this subchapter that is also punishable under another law to be prosecuted under either law.

Sec. 7.154. DEFENSE EXCLUDED. Provides that it is not a defense to prosecution under this subchapter that the person did not know or was not aware of a rule, order, or statute.

SUBCHAPTER F. DEFENSES

Sec. 7.181. ACT OF GOD. Provides that, if a person can establish that an event which would otherwise be a violation of the statutes and rules within TNRCC's jurisdiction was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the statutes and rules within TNRCC's jurisdiction.

Sec. 7.182. DEFENSES TO ENDANGERMENT OFFENSES. Sets forth affirmative defenses to endangerment offenses.

Sec. 7.183. DEFENSES AVAILABLE TO PERSON RESPONSIBLE FOR SOLID WASTE VIOLATIONS. Sets forth defenses available to a person responsible for solid waste violations.

SUBCHAPTER G. REVOCATION AND SUSPENSION OF PERMITS, LICENSES AND CERTIFICATES OF REGISTRATION

Sec. 7.201. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMITS. Sets forth grounds for revocation or suspension of a permit.

Sec. 7.202. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSES AND CERTIFICATES OF REGISTRATION. Sets forth grounds for revocation or suspension of licenses and certificates of registration.

Sec. 7.203. PROCEDURES. Requires TNRCC, by rule, to establish procedures for public notice and any public hearing under this subchapter.

Sec. 7.204. HEARINGS. Requires hearings under this subchapter to be conducted in accordance with the hearing rules adopted by TNRCC and the applicable provisions of Chapter 2001, Government Code.

Sec. 7.205. CONSENT. Authorizes the executive director, if the permittee requests or consents to the revocation or suspension of the permit, license, or certification of registration, to revoke or suspend the permit, license, exemption, certification or registration without a hearing.

Sec. 7.206. OTHER RELIEF. Prohibits a proceeding brought by TNRCC under this subchapter from affecting TNRCC's authority to bring suit for injunctive relief or penalty or both under Section 7.014.

Sec. 7.207. REQUIREMENTS OF LICENSEES AND REGISTRANTS. Authorizes TNRCC, if a licensee's, certificate holder's, or registrant's suspension is probated, to require the licensee, certificate holder, or registrant to meet certain requirements.

Sec. 7.208. PERMIT HOLDER. Defines "permit holder."

Sec. 7.209. RECEIVERSHIP. Sets forth regulations regarding the appointment of a receiver for a water or sewer utility.

SUBCHAPTER H. REMEDIES

Sec. 7.221. REMEDIES CUMULATIVE. Provides that the remedies under this chapter

are cumulative of all other remedies. Provides that nothing in this chapter affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance, to recover damages, to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

Sec. 7.222. OTHER LAW. Provides that this chapter does not exempt a person from complying with or being subject to other law.

SUBCHAPTER I. SUIT BY OTHERS

Sec. 7.231. CIVIL SUITS. Sets forth regulations regarding civil suits by persons other than TNRCC.

Sec. 7.232. RESOLUTION. Prohibits a local government from exercising the enforcement power provided under this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Sec. 7.233. COMMISSION NECESSARY PARTY. Provides that, in a suit brought by a local government under this subchapter, TNRCC is a necessary and indispensable party.

Sec. 7.234. COSTS AND FEES. Requires a penalty collected in a suit under this subchapter to be paid to the state. Requires the court, if the suit is brought by a local government or affected person, to include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Sec. 7.235. COMPLAINTS. Authorizes a local government or affected person to file with TNRCC a written complaint and request an investigation of an alleged violation by a person who holds a permit, federal operating permit, exemption, certificate of registration or license subject to TNRCC's jurisdiction.

Sec. 7.236. COMMISSION REPLY. Requires TNRCC to reply to the complainant in writing within a certain time after the complaint is received and to provide a copy of any investigation report relevant to the complaint together with a determination of whether the alleged violation was committed.

Sec. 7.237. PROSECUTION. Authorizes a local government or affected person to bring suit in a court of competent jurisdiction in the county in which the alleged violation occurred or is about to occur, if TNRCC does not have a suit filed before the 121st day after the date on which the written complaint is filed under Section 7.235.

Sec. 7.238. OTHER REQUIREMENTS. Authorizes the regulatory authority of any local government to require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.

SECTION 3. Amends Section 12.052, Water Code, to prohibit the owner of a dam that is required to take certain actions in order to comply with the rules and orders promulgated under Subsection (a) of this section from wilfully failing or refusing to comply within the 30-day period following the date of TNRCC's order to do so and prohibits the owner from wilfully failing to comply with any rule or other order issued by TNRCC under this section within the 30-day period following the effective date of the order. Delete existing text regarding assessment of a penalty and the issuance of an emergency order regarding an unsafe dam. Makes conforming changes.

SECTION 4. Amends Section 13.254, Water Code, as follows:

Sec. 13.254. New heading: AMENDMENT OF CERTIFICATE. Deletes references to revocation of a certificate of public convenience and necessity.

SECTION 5. Amends Section 16.236, Water Code, to delete existing text regarding violations of this section.

SECTION 6. Amends Section 26.029, Water Code, as follows:

Sec. 26.029. New heading: CONDITIONS OF PERMIT AMENDMENT. Deletes existing text regarding revocation or suspension of a permit.

SECTION 7. Amends Section 26.0301, Water Code, to delete existing text regarding the suspension or revocations of a certificate of competency for a sewage treatment facility operation.

SECTION 8. Amends Section 361.089, Health and Safety Code, as follows:

Sec. 361.089. New heading: PERMIT DENIAL OR AMENDMENT. Makes conforming changes.

SECTION 9. Amends Section 401.054, Health and Safety Code, to make a conforming change.

SECTION 10. Amends Section 11.081, Water Code, to delete existing text regarding violations of this section.

SECTION 11. Amends Section 11.083, Water Code, to make conforming changes.

SECTION 12. Amends Section 11.084, Water Code, to make conforming changes.

SECTION 13. Amends Section 11.085, Water Code, to make conforming changes.

SECTION 14. Amends Section 11.087, Water Code, to require orders made by TNRCC to effectuate its rules under this section to be mailed by certified mail to certain persons. Makes conforming changes.

SECTION 15. Amends Section 11.088, Water code, to make conforming changes.

SECTION 16. Amends Section 11.089, Water Code, to make conforming changes.

SECTION 17. Amends Section 11.090, Water Code, to make conforming changes.

SECTION 18. Amends Section 11.091, Water Code, to make conforming changes.

SECTION 19. Amends Section 11.094, Water Code, to make conforming changes.

SECTION 20. Amends Section 11.096, Water code, to make conforming changes.

SECTION 21. Amends Section 26.019, Water Code, to make conforming changes.

SECTION 22. Amends Section 361.011, Health and Safety Code, to make conforming changes.

SECTION 23. Amends Section 371.271, Health and Safety Code, to delete the limitation that this section sets forth who is responsible for solid waste for the purpose of this subchapter only.

SECTION 24. Emergency clause.
Effective date: upon passage.