

## **BILL ANALYSIS**

Senate Research Center  
76R13289 SKT-F

S.C.R. 72  
By: Ratliff  
Jurisprudence  
5/6/1999  
As Filed

### **DIGEST**

Currently, Dean Lumber Company, Inc., (DLC), alleges that the Texas Natural Resource Conservation Commission (TNRCC) engaged in predatory, malicious, and unfair practices in the enforcement of TNRCC rules and regulations that resulted in economic damages to DLC. DLC has always strived to maintain compliance with the rules and regulations of TNRCC, and devoting substantial time and expense to that pursuit. DLC alleges that when it was notified by TNRCC of its upcoming inspection of DLC facilities, TNRCC refused DLC's request to schedule the inspection at a mutually convenient date. DLC alleges that TNRCC's refusal to schedule the inspection resulted in the loss of 10 days of production and the loss of customers, who were frustrated by DLC's lagging production. DLC alleges that TNRCC has enacted rules and regulations with which it is technically and practically impossible to comply, and which TNRCC has arbitrarily and capriciously enforced against DLC. DLC alleges that the arbitrary and capricious enforcement of these rules and regulations resulted in DLC spending thousands of dollars defending itself from the imposition of unfair and factually unwarranted penalties by TNRCC. DLC alleges that TNRCC intentionally and knowingly published or caused to be published false information regarding the emission levels of arsenic and chromium from DLC, which reflected a much higher emission level than was accurate. As a result of TNRCC, as well as the publication of false information regarding emission levels, DLC has been targeted for potential toxic tort lawsuits, which has caused DLC to spend thousands of dollars defending itself from these frivolous lawsuits. Once DLC was notified of possible noncompliance with TNRCC rules and regulations, DLC petitioned TNRCC to join TNRCC's voluntary compliance program, but was denied solely because it was being targeted for possible sanctions by TNRCC. DLC alleges that the actions of TNRCC are in direct conflict with TNRCC's stated mission that its "decisions must be based on common sense, good science, and fiscal responsibility" and deprived DLC of the ability to meet financial commitments. DLC alleges it has sustained damages as a result of the actions of TNRCC. S.C.R. 72 would grant DLC permission to sue the State of Texas and TNRCC.

### **PURPOSE**

As proposed, S.C.R. 72 submits the following resolutions:

That the legislature of the State of Texas grants the Dean Lumber Company, Inc. (DLC), permission to sue the State of Texas and the Texas Natural Resource Conservation Commission (TNRCC) subject to Chapter 107, Civil Practice and Remedies Code.

That the remedies available to DLC in the suit authorized by this resolution are limited to the remedies traditionally available for the causes of action alleged in this resolution, but that DLC may not recover punitive or exemplary damages resulting from the actions of TNRCC.

That DLC and TNRCC may agree to submit the matter that is the subject of this resolution to binding arbitration.

That the executive director of TNRCC be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.