

BILL ANALYSIS

Senate Research Center

H.B. 2533
By: Geren; Fallon (Estes)
Natural Resources & Economic Development
7/28/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, cities, counties, and some affected persons may file suits to seek injunctive relief and civil penalties based on violations of the state's environmental codes in the same way that the state can. These suits can result in over-penalizing the same act or omission when multiple suits from multiple jurisdictions are filed regarding the same incident. They also result in inconsistent assessments of penalties for the same wrongdoing, hampering the state's attempts to apply its laws uniformly. Recently, the state's attempts to investigate and prosecute the Volkswagen emissions fraud case were impeded by 21 conflicting lawsuits from Texas counties and municipalities. The involvement of these counties and municipalities led to Texas' exclusion from a multi-state investigation and has also prevented the state from settling the air quality portions of its claims against Volkswagen on the terms agreed to by the other states involved in the national litigation.

To bring order and uniformity to this area of the law, this bill would provide that, before filing a suit for civil penalties, local governments and affected persons would first need to provide the Texas attorney general (attorney general) and the executive director of the Texas Commission on Environmental Quality (TCEQ) with written notice of the alleged violation. If the attorney general and TCEQ did not act within 90 days, the local governments and affected persons would be free to proceed. However, if the attorney general commenced a proceeding before the expiration of 90 days, the local governments and affected persons could not file suit for civil penalties. The waiting period would be shortened to 45 days in cases when the wrongdoing was discovered within 120 days of the statute of limitations expiring. The bill would not alter existing procedures relating to injunctive relief. (Original Author's / Sponsor's Statement of Intent)

H.B. 2533 amends current law relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.351, Water Code, as follows:

Sec. 7.351. CIVIL SUITS. (a) Authorizes a person affected, subject to Section 7.3511, rather than authorizes a person affected, if it appears that a violation or threat of violation of certain statutes or a rule adopted or an order or a permit issued under certain statutes has occurred or is occurring in certain jurisdictions, to take certain actions.

(b) Authorizes an authorized agent, subject to Section 7.3511, rather than authorizes an authorized agent, if it appears that certain violations or threat of

violations has occurred or is occurring in certain jurisdictions, to institute a civil suit.

SECTION 2. Amends Subchapter H, Chapter 7, Water Code, by adding Section 7.3511, as follows:

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE. (a) Defines "authorized agent" and "person affected."

(b) Provides that this section applies only to a claim for a civil penalty in a civil suit under this subchapter for a violation of a statute, rule, order, or permit described by Section 7.351.

(c) Requires a local government, a person affected, or an authorized agent, before instituting any claim described by Subsection (b), to provide to the Texas attorney general (attorney general) and the executive director of the Texas Natural Resource Conservation Commission (executive director; TNRCC) written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) Authorizes a local government, a person affected, or an authorized agent to institute a claim described by Subsection (b) on or after the 90th day after the date the attorney general and the executive director receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received TNRCC has commenced a proceeding under Subchapter C (Administrative Penalties) or the attorney general has commenced a civil suit under Subchapter D (Civil Penalties) concerning at least one of the alleged violations set forth in the notice.

(e) Authorizes the local government, person affected, or authorized agent, if a local government, a person affected, or an authorized agent discovers a violation that is within 120 days of the expiration of the limitations period described in Section 7.360 (Limitations), to institute a claim described by Subsection (b) on or after the 45th day after the date the attorney general and the executive director receive the notice required by Subsection (c) unless before the 45th day after the date the notice is received TNRCC has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice. Requires the local government, person affected, or authorized agent, in the circumstances described by this subsection, in addition to providing the notice required by Subsection (c), to :

(1) provide a copy of the notice by certified mail or hand delivery to the chief of the division of the Office of the Attorney General responsible for handling environmental enforcement claims; and

(2) include with the copy of the notice under Subdivision (1) a statement providing that the copy of the notice is being provided pursuant to this subsection.

SECTION 3. Repealer: Section 7.357 (Prosecution), Water Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2017.