

## **BILL ANALYSIS**

C.S.H.B. 2533  
By: Geren  
Natural Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that local governments are increasingly bringing environmental enforcement actions using contingency fee private counsel and that sometimes these actions are contrary to statewide enforcement policy or interpretation. C.S.H.B. 2533 seeks to address this issue by requiring notice to be provided to the attorney general and the executive director of the Texas Commission on Environmental Quality before the institution of certain civil suits.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2533 amends the Water Code to require a local government, a person affected, or an authorized agent, before instituting any claim in a civil suit seeking a civil penalty for a violation of a statute, rule, or permit under certain Water Code, Health and Safety Code, or Occupations Code provisions, to provide to the attorney general and the executive director of the Texas Commission on Environmental Quality (TCEQ) written notice of each alleged violation, the facts in support of the claim, and the specific relief sought. The bill authorizes a local government, a person affected, or an authorized agent to institute a suit on or after the 90th day after the date the attorney general and the executive director receive the notice unless, before the 90th day after the date the notice is received, TCEQ has commenced an administrative penalty proceeding or the attorney general has commenced a civil suit concerning at least one of the alleged violations set forth in the notice. The bill authorizes a local government, a person affected, or an authorized agency that discovers a violation that is within 120 days of the expiration of the applicable limitations period to institute a suit on or after the 45th day after the date the attorney general and the executive director of TCEQ receive the required notice unless, before the 45th day after the date the notice is received, the attorney general has commenced a civil suit concerning at least one of the alleged violations set forth in the notice. The bill requires the local government, person affected, or authorized agent, under such circumstances, to provide a copy of the notice by certified mail or hand delivery to the chief of the division of the attorney general's office responsible for handling environmental enforcement claims.

C.S.H.B. 2533 repeals Section 7.357, Water Code, which authorizes a local government or, in the case of a violation of the Texas Radiation Control Act, a person affected to bring suit in the county in which an alleged violation occurred or is about to occur if TCEQ does not have a suit filed before the 121st day after the date on which an applicable written complaint is filed.

**EFFECTIVE DATE**

September 1, 2017.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2533 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

SECTION 1. Section 7.351, Water Code, is amended.

SECTION 2. Subchapter H, Chapter 7, Water Code, is amended by adding Section 7.3511 to read as follows:

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE. (a) In this section:

(1) "Authorized agent" has the meaning assigned by Section 366.002, Health and Safety Code.

(2) "Person affected" has the meaning assigned by Section 401.003, Health and Safety Code.

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

(c) Before instituting any claim in a suit described by Subsection (b), a local government, a person affected, or an authorized agent shall provide to the attorney general and the executive director of the commission written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) A local government, a person affected, or an authorized agent may institute a suit described by Subsection (b) on or after the 90th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received:

(1) the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice; or

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Same as introduced version.

SECTION 2. Subchapter H, Chapter 7, Water Code, is amended by adding Section 7.3511 to read as follows:

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE. (a) In this section:

(1) "Authorized agent" has the meaning assigned by Section 366.002, Health and Safety Code.

(2) "Person affected" has the meaning assigned by Section 401.003, Health and Safety Code.

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

(c) Before instituting any claim in a suit described by Subsection (b), a local government, a person affected, or an authorized agent shall provide to the attorney general and the executive director of the commission written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) A local government, a person affected, or an authorized agent may institute a suit described by Subsection (b) on or after the 90th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received the

commission 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.

(2) the attorney general or the executive director of the commission denies, in writing, authorization to the local government, person affected, or authorized agent to pursue a suit described by Subsection (b) concerning the alleged violations.

No equivalent provision.

No equivalent provision.

(e) 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, the local government, person affected, or authorized agent may institute a suit described by Subsection (b) on or after the 45th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 45th day after the date the notice is received the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice. In the circumstances described by this subsection, in addition to providing the notice required by Subsection (c), the local government, person affected, or authorized agent must provide a copy of the notice by certified mail or hand delivery to the chief of the division of the attorney general's office responsible for handling environmental enforcement claims.

SECTION 3. Section 7.357, Water Code, is repealed.

SECTION 3. Same as introduced version.

SECTION 4. The changes in law made by this Act apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 4. Same as introduced version.

SECTION 5. This Act takes effect September 1, 2017.

SECTION 5. Same as introduced version.