

BILL ANALYSIS

Senate Research Center
79R4092 JTS-F

S.B. 699
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Natural Resources
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Section 7.053, Water Code, enumerates the factors that the Texas Commission on Environmental Quality (TCEQ) considers in determining the amount of an administrative penalty for violation of environmental laws. As part of the current process for enforcement of environmental laws, TCEQ determines how much money the violator saved by not taking the actions needed to achieve compliance and bases the penalty on that.

In many cases, however, the penalties are considerably lower than the costs saved by a company operating in violation of environmental laws, savings that commonly include, among other items, the interest a polluter earned on the investment of capital that should have been spent on pollution controls. In effect, violators reap an economic benefit by non-compliance. For that reason, the current system for applying penalties does not adequately deter future violations or environmental harm.

As proposed, S.B. 699 requires that administrative penalties be set to recover, to the extent practicable, any economic benefit gained by a violator of environmental law as a result of non-compliance.

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 7.053, Water Code, to require the Texas Commission on Environmental Quality (commission), except as otherwise provided by Section 7.052 (setting maximum penalties for certain offenses) and notwithstanding Subsection (a) (requiring the commission to consider certain factors in setting the amount of an administrative penalty), in determining the amount of an administrative penalty, to the extent practicable, to ensure that the amount of the penalty is at least equal to the value of any economic benefit gained by the alleged violator through the violation, if the executive director of the commission determines that the violation could have been avoided through reasonable and prudent action by the alleged violator. Creates a subsection from existing text and makes a nonsubstantive change.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.