

BILL ANALYSIS

Senate Research Center

H.B. 1794
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested persons note that the process allowing local governments to bring lawsuits for penalties and injunctive relief for alleged violations of environmental laws, such as illegal dumping of pollutants and unpermitted waste sites, supplements the enforcement activities of the Texas Commission on Environmental Quality and has been in place for several decades. However, informed observers explain that the ruling in a recent lawsuit in which penalties were assessed against a company for the release of dangerous pollutants into Texas waters has dramatically altered the face of environmental enforcement in Texas. There is concern that the ruling poses a grave threat to the fairness of Texas' environmental enforcement system and, in the long run, Texas' economic competitiveness. H.B. 1794 seeks to address this concern by amending the applicable law.

H.B. 1794 amends current law relating to suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality; and affects civil penalties.

[**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 7.107, Water Code, as follows:

Sec. 7.107. DIVISION OF CIVIL PENALTY. Requires a civil penalty recovered in a suit brought under this subchapter by a local government, except in a suit brought for a violation of Chapter 28 (Water Wells and Drilled or Mined Shafts), Water Code, or Chapter 401 (Radioactive Materials and Other Sources of Radiation), Health and Safety Code, be divided as follows:

(1) the first \$4.3 million of the amount recovered shall be divided equally between:

(A) Creates this paragraph from existing text; and

(B) Redesignates existing Subdivision (2) as Paragraph (B) and makes a nonsubstantive change; and

(2) any amount recovered in excess of \$4.3 million shall be awarded to the state.

Deletes existing text requiring a civil penalty recovered in a suit brought under this subchapter by a local government, except in a suit brought for a violation of Chapter 28,

Water Code, or Chapter 401, Health and Safety Code, be equally divided between the state and the local government that brought the suit.

SECTION 2. Amends Subchapter H, Chapter 7, Water Code, by adding Sections 7.359, 7.360, and 7.361, as follows:

Sec. 7.359. LIMITATION ON CIVIL PENALTY. (a) Provides that a person may be assessed a civil penalty of not less than \$50 and not more than \$25,000 for each day of each violation, provided that the amount assessed may not exceed \$4.3 million, except as provided by Subsection (b), in a suit brought by a local government under this subchapter.

(b) Provides that this section does not limit the state's authority to pursue the assessment of a civil penalty under this chapter.

Sec. 7.360. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL PENALTY. Requires the trier of fact to consider the factors described by Section 7.053 (Factors to be Considered in Determination of Penalty Amount) in determining the amount of a civil penalty to be assessed in a suit brought by a local government under this subchapter.

Sec. 7.361. LIMITATIONS. Requires a suit for a civil penalty that is brought by a local government under this subchapter to be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation:

(1) notifies the Texas Natural Resource Conservation Commission (TNRCC) in writing of the violation; or

(2) receives a notice of enforcement from TNRCC with respect to the alleged violation.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.