

BILL ANALYSIS

C.S.H.B. 3164
By: Capelo
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Until 1997, the predecessor agency to the Texas Commission on Environmental Quality (TCEQ) and the Office of the Attorney General (OAG) were required to be involved in a decision to criminally prosecute violations of the Texas Clean Air Act, Chapter 382, Health and Safety Code. Presently, no such process is required under any state environmental crime provisions. A local prosecutor may file criminal charges under Chapter 7, Texas Water Code, asserting violations of TCEQ rules without the involvement, advice or consent of the TCEQ or the OAG. There is a perception that an increasing number of prosecutions are inconsistent with TCEQ policies, guidance and interpretation. Likewise, there is ample evidence that matters more appropriately and historically addressed through administrative penalty or civil remedies are being prosecuted criminally, oftentimes with felony charges.

HB3164 will reestablish a requirement that the TCEQ and the OAG confer and recommend criminal prosecution of Texas environmental laws and regulations before the initiation of prosecution. The legislation would only apply to cases in which the potential defendant is permitted by the TCEQ. The bill is designed to establish consistent, fair and logical procedural requirements prerequisite to filing charges for environmental crimes on behalf of the State of Texas. The enactment of this law would not change any applicable TCEQ rule or standard. It applies only to those regulated entities that have sought to comply with the authorization and permitting requirements of the TCEQ.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

ANALYSIS

SECTION 1. PURPOSE Provides that the purpose of this Act is to ensure statewide consistency in the interpretation and enforcement of environmental laws.

SECTION 2. CRIMINAL ENFORCEMENT REVIEW

- (a) The substitute amends the Water Code by adding Section 7.203 which applies to a criminal prosecution of alleged environmental violations of this code, the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission within its jurisdiction committed by a defendant holding a permit issued by the commission or defendant employed by a person holding such a permit. This section does not apply to an environmental violation that clearly involves imminent danger or death or bodily injury under an endangerment offense specified in Section 7.252.
- (b) A peace officer shall notify the commission in writing of the alleged environmental violation. Only after this notification, may a peace officer refer a violation of this code to a prosecuting attorney. Included with the notification is a report describing the facts and circumstances of the alleged criminal environmental violation.

- (c) The commission shall evaluate the report within 60 days after receiving it from the peace officer. They will determine whether administrative or civil remedies would adequately and appropriately address the alleged environmental violation.
- (d) The commission shall issue written notification to the peace officer that the alleged environmental violations is to be resolved through administrative or civil means by the appropriate authorities. If the commission determines an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution.
- (e) Any fine, penalty, or settlement recovered through prosecution subject to this section ad brought in the name of the State of Texas shall be apportioned 80 percent to the state to cover the costs of instituting the procedures and requirements of this section; and 20 percent to any local government significantly involved in prosecuting the case.

SECTION 3. TRANSITION

The Texas Commission on Environmental Quality, by rule, shall establish procedures to fulfill requirements of this act within 6 months after the effective date of this Act, by rule, to establish procedures to fulfill the requirements of Subsections (a) through (d), Section 7.203, Water Code, as added by this Act, and to ensure an objective and unbiased process.

SECTION 4. EFFECTIVE DATE

Effective date: upon passage or September 1, 2003.

EFFECTIVE DATE

Upon passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

Committee Substitute House Bill 7 modifies the original by removing the ability of the commission or the executive director from consulting with the Attorney General concerning possible criminal prosecution of any alleged violation under this code, the Health and Safety Code, or any other statute or permit that is within the commission's jurisdiction.