

By: Hinojosa

S.B. No. 1878

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the relationship between the amount of an  
3 administrative penalty imposed by the Texas Commission on  
4 Environmental Quality and the economic benefit of the violation to  
5 the alleged violator.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 7.053, Water Code, is amended to read as  
8 follows:

9 Sec. 7.053. FACTORS TO BE CONSIDERED IN DETERMINATION OF  
10 PENALTY AMOUNT. (a) In determining the amount of an administrative  
11 penalty, the commission shall consider:

12 (1) the nature, circumstances, extent, duration, and  
13 gravity of the prohibited act, with special emphasis on the  
14 impairment of existing water rights or the hazard or potential  
15 hazard created to the health or safety of the public;

16 (2) the impact of the violation on:

17 (A) air quality in the region;

18 (B) a receiving stream or underground water  
19 reservoir;

20 (C) instream uses, water quality, aquatic and  
21 wildlife habitat, or beneficial freshwater inflows to bays and  
22 estuaries; or

23 (D) affected persons;

24 (3) with respect to the alleged violator:

1 (A) the history and extent of previous  
2 violations;

3 (B) the degree of culpability, including whether  
4 the violation was attributable to mechanical or electrical failures  
5 and whether the violation could have been reasonably anticipated  
6 and avoided;

7 (C) the demonstrated good faith, including  
8 actions taken by the alleged violator to rectify the cause of the  
9 violation and to compensate affected persons;

10 (D) the economic benefit gained through the  
11 violation; and

12 (E) the amount necessary to deter future  
13 violations; and

14 (4) any other matters that justice may require.

15 (b) Except as otherwise provided by Section 7.052 and  
16 notwithstanding Subsection (a) of this section, in determining the  
17 amount of an administrative penalty, the commission shall, to the  
18 extent practicable, ensure that the amount of the penalty is at  
19 least equal to the value of any economic benefit gained by the  
20 alleged violator through the violation if the executive director  
21 determines that the violation could have been avoided through  
22 reasonable and prudent action by the alleged violator.

23 SECTION 2. (a) This Act takes effect September 1, 2003.

24 (b) The change in law made by this Act applies only to a  
25 violation that occurs on or after the effective date of this Act.  
26 For purposes of this section, a violation occurs before the  
27 effective date of this Act if any element of the violation occurs

1 before that date.

2 (c) A violation that occurs before the effective date of  
3 this Act is covered by the law in effect on the date the violation  
4 occurred, and the former law is continued in effect for that  
5 purpose.