

By: Burnam

H.B. No. 2934

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the attorney general to enforce certain environmental matters.

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

SECTION 1. Subchapter A, Chapter 7, Water Code, is amended by adding Section 7.0027 to read as follows:

Sec. 7.0027. PETITION FOR ENFORCEMENT BY ATTORNEY GENERAL.

(a) An individual may petition the attorney general to initiate an enforcement action on an environmental matter within the commission's jurisdiction under Section 7.002.

(b) The petition must include detailed information concerning an alleged past, ongoing, or threatened violation of a statute, of a commission rule or order, or of a permit issued by the commission. The petition must allege that the commission has considered the violation and has failed or is failing to adequately enforce the underlying statute, rule, order, or permit. To the extent of the petitioner's knowledge, the petition must include:

(1) the name and address of any entity participating in the alleged violation;

(2) each statute, rule, order, or permit provision allegedly violated;

(3) the exact nature, date, and location of the alleged violation;

(4) the date the commission considered the alleged

1 violation;

2 (5) the final decision of the commission concerning  
3 the alleged violation;

4 (6) the petitioner's name, address, and phone number;  
5 and

6 (7) the reason the petitioner considers the  
7 commission's response to the alleged violation inadequate.

8 (c) Failure to complete an item under Subsection (b) does  
9 not invalidate a petition.

10 (d) A petitioner must submit the petition to the attorney  
11 general not later than the 90th day after the date on which the  
12 commission made its final decision concerning the alleged  
13 violation.

14 (e) Any applicable statute of limitations is tolled from the  
15 date a petition is filed under this section until the date on which  
16 the attorney general notifies the individual whether the petition's  
17 allegations justify initiating an enforcement action. The attorney  
18 general must notify the petitioner not later than the 90th day after  
19 the date on which the attorney general receives the petition.

20 (f) If the attorney general finds during the investigation  
21 of the petition's claim that there is justification for an  
22 enforcement action, the attorney general shall file suit or  
23 initiate criminal prosecution as appropriate in district court to  
24 restrain or enjoin an ongoing or threatened violation, to recover  
25 on behalf of the state a penalty or fine provided by statute, to  
26 pursue both injunctive relief and a penalty or fine, and to enforce  
27 any other provision of the applicable statute.

1        (g) Venue of a civil or criminal enforcement action under  
2 this section is in:

3            (1) the county in which the violation is alleged to  
4 have occurred, to be occurring, or to be about to occur;

5            (2) the county in which the defendant resides; or

6            (3) Travis County.

7        (h) The attorney general shall inform the commission of the  
8 attorney general's intention to initiate an enforcement action  
9 under this section not later than the 90th day before the date on  
10 which the suit is filed or criminal prosecution is initiated.

11        (i) The attorney general may bring an action for criminal  
12 prosecution under this section jointly with the appropriate  
13 prosecuting attorney for an involved local government. A fine,  
14 penalty, or settlement recovered under joint action under this  
15 subsection whether recovered through any form of pretrial  
16 resolution, plea agreement, or sentencing after trial, shall be  
17 apportioned 70 percent to the state to cover the costs of the  
18 action, including pretrial investigations, attorneys' fees, and  
19 expert witness fees, and 30 percent to any involved local  
20 government.

21        SECTION 2. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2005.