

BILL ANALYSIS

C.S.H.B. 2535
By: Creighton
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas has more than 7,500 dams across the state. Over 1,700 of these are classified as high or significant hazard, meaning significant loss of life or property could occur if the dam should fail. The Texas Commission on Environmental Quality ("TCEQ") oversees the dam safety program, but lacks the authority or resources to ensure safe construction, maintenance, repair and removal of the dams. The bill clarifies that dam owners and operators have the obligation to properly maintain and operate dams in accordance with state statutes and the TCEQ rules.

C.S.H.B. 2535 authorizes the TCEQ to fine a person who violates a provision of law or a related rule or order relating to dam safety in an amount not to exceed \$10,000 per day. The bill requires the TCEQ to give preference to inspecting dams that are classified as posing a high or significant hazard in determining the frequency that dams are inspected.

RULEMAKING AUTHORITY

It is the Committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 of this bill.

ANALYSIS

SECTION 1. Amends Section 11.0842(a) and (b), Water Code, as follows:

Subsection (a) Adds Section 12.052 to the list of those violations on which the TCEQ is able to assess an administrative penalty.

Subsection (b) Provides that the penalty for violations of this chapter, a rule or order adopted under this chapter, or a permit, certified filing, or certificate of adjudication issued under this chapter cannot exceed \$5,000 for each day the person is in violation. Provides that the penalty for violations of a rule or order under Section 12.052 cannot exceed \$10,000 for each day the person is in violation. Provides that the penalty for violations of a rule or order under Section 16.236 cannot exceed \$1,000 for each day the person is in violation. Provides that each day a violation continues may constitute a separate violation for purpose of penalty assessment.

SECTION 2. Amends Section 12.052, Water Code, by amending Subsections (a), (c), and (e) and adding Subsections (g) and (h), as follows:

Subsection (a) Requires the TCEQ to make and enforce rules and orders and to perform all other acts necessary to provide for the safe operation, as well as certain other functions, of a dam located in Texas. Provides that the TCEQ must give preference to inspecting dams that are classified as posing a high or significant hazard, defined by TCEQ rule, in determining the frequency that dams in Texas are inspected.

Subsection (c) Provides that dam owners must properly maintain and operate, along with construct, reconstruct, repair, and remove dams in order to comply with the rules and orders promulgated under provisions relating to dam safety to the persons liable for a penalty if the person willfully fails or refuses to comply within the 30-day period following the date of the TCEQ's final, nonappealable order to do so or if a person willfully fails to comply with any rule or other order issued by the TCEQ under such provisions within the 30-day period following the

effective date of the order. Provides the maximum amount of such a penalty is \$10,000 a day for each day the person continues to violate such provisions, rather than \$5,000 a day.

Subsection (e) Provides that if the TCEQ issues an emergency order without notice to the dam owner, then the TCEQ must provide a time and place for a hearing that must be held as soon as practicable to address the emergency order. Provides that notice does not have to comply with Chapter 2001, Government code. Provide that further proceedings must be conducted under the provisions of Chapter 2001, Government Code, rather than the Administrative Procedure and Texas Register Act.

Subsection (g) Authorizes the TCEQ to assess an administrative penalty under Section 11.0842 against a person who violates a rule or order adopted under this section.

Subsection (h) Provides that this section does not affect the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

SECTION 3. Provides that the changes in law apply only to violations that occur on or after the effective date of this Act. Provides that for purpose of this section, a violation occurs before the effective date of this Act, if any element of the violation occurs before that date and that such violation is thus governed by the law in effect on the date of the violation and former law continues in effect for that purpose.

SECTION 4. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. Subsection (a) Adds a provision not in the original requiring the TCEQ, in determining the frequency that dams in Texas are inspected, to give preference to inspecting dams that are classified as posing a high or significant hazard as defined by TCEQ rule.