

By: Gattis

H.B. No. 826

A BILL TO BE ENTITLED

1 AN ACT
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
11 administrative 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 Subsections (c) and (d)
16 and notwithstanding Subsection (a), in determining the amount of an
17 administrative penalty, the commission shall, to the extent
18 practicable, ensure that the amount of the penalty is at least equal
19 to the value of any economic benefit gained by the alleged violator
20 through the violation.

21 (c) In determining the economic benefit of noncompliance,
22 the commission shall provide the alleged violator, on the
23 violator's request, an opportunity to:

24 (1) review the information on which the economic
25 benefit calculation is based; and

26 (2) demonstrate that the calculation does not reflect
27 the actual circumstances.

1 (d) The consideration of an economic benefit as provided by
2 Subsection (b) may not result in the imposition of an
3 administrative penalty in an amount that exceeds a limitation on
4 the amount of the penalty provided by statute, including the
5 maximum amount provided by Section 7.052.

6 (e) The commission shall allow a governmental entity or
7 nonprofit organization to defer payment on any portion of the
8 penalty attributable to the consideration of economic benefit on
9 the condition that the entity or organization complies with the
10 schedule and terms of the enforcement order associated with the
11 violation for which the penalty is imposed.

12 SECTION 2. (a) The change in law made by this Act applies
13 only to a violation that occurs on or after the effective date of
14 this Act. For purposes of this section, a violation occurs before
15 the effective date of this Act if any element of the violation
16 occurs before that date.

17 (b) A violation that occurs before the effective date of
18 this Act is covered by the law in effect on the date the violation
19 occurred, and the former law is continued in effect for that
20 purpose.

21 SECTION 3. This Act takes effect September 1, 2009.