

By: Creighton

H.B. No. 2535

Substitute the following for H.B. No. 2535:

By: Corte

C.S.H.B. No. 2535

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the regulation and enforcement of dam safety by the
3 Texas Commission on Environmental Quality; providing civil and
4 administrative penalties.

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

6 SECTION 1. Sections 11.0842(a) and (b), Water Code, are
7 amended to read as follows:

8 (a) If a person violates this chapter, a rule or order
9 adopted under this chapter, Section 12.052, or Section 16.236, or a
10 permit, certified filing, or certificate of adjudication issued
11 under this chapter, the commission may assess an administrative
12 penalty against that person as provided by this section. The
13 commission may assess an administrative penalty for a violation
14 relating to a water division or a river basin or segment of a river
15 basin regardless of whether a watermaster has been appointed for
16 the water division or river basin or segment of the river basin.

17 (b) The penalty may be in an amount not to exceed \$5,000 for
18 each day the person is in violation of this chapter, a ~~the~~ rule or
19 order adopted under this chapter, or a ~~the~~ permit, certified
20 filing, or certificate of adjudication issued under this chapter.
21 The penalty may be in an amount not to exceed \$10,000 for each day
22 the person is in violation of a rule or order adopted under Section
23 12.052. The penalty may be in an amount not to exceed \$1,000 for
24 each day the person is in violation of a ~~the~~ rule or order adopted

1 under Section 16.236 [~~of this code~~]. Each day a violation continues
2 may be considered a separate violation for purposes of penalty
3 assessment.

4 SECTION 2. Section 12.052, Water Code, is amended by
5 amending Subsections (a), (c), and (e) and adding Subsections (g)
6 and (h) to read as follows:

7 (a) The commission shall make and enforce rules and orders
8 and shall perform all other acts necessary to provide for the safe
9 construction, maintenance, operation, repair, and removal of dams
10 located in this state. In determining the frequency that dams
11 located in this state are inspected, the commission shall give
12 preference to inspecting dams that are classified as posing a high
13 or significant hazard as defined by commission rule.

14 (c) If the owner of a dam that is required to be constructed,
15 reconstructed, maintained, operated, repaired, or removed in order
16 to comply with the rules and orders promulgated under [~~Subsection~~
17 ~~(a) of~~] this section wilfully fails or refuses to comply within the
18 30-day period following the date of the commission's final,
19 nonappealable order to do so or if a person wilfully fails to comply
20 with any rule or other order issued by the commission under this
21 section within the 30-day period following the effective date of
22 the order, the person [~~he~~] is liable for [~~to~~] a penalty of not more
23 than \$10,000 [~~\$5,000~~] a day for each day the person [~~he~~] continues
24 to violate this section. The state may recover the penalty by suit
25 brought for that purpose in the district court of Travis County.

26 (e) If the commission issues an emergency order under
27 authority of this section without notice to the dam owner, the

1 commission shall fix a time and place for a hearing which shall be
2 held as soon as practicable to affirm, modify, or set aside the
3 emergency order. The notice does not have to comply with Chapter
4 2001, Government Code. If the nature of the commission's action
5 requires further proceedings, those proceedings shall be conducted
6 as appropriate under Chapter 2001, Government Code [~~the~~
7 ~~Administrative Procedure and Texas Register Act, as amended~~
8 ~~(Article 6252-13a, Vernon's Texas Civil Statutes)~~].

9 (g) The commission may assess an administrative penalty as
10 provided by Section 11.0842 against a person who violates a rule or
11 order adopted under this section.

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

17 SECTION 3. (a) The changes in law made by this Act to
18 Sections 11.0842 and 12.052, Water Code, apply only to a violation
19 that occurs on or after the effective date of this Act. For
20 purposes of this section, a violation occurs before the effective
21 date of this Act if any element of the violation occurs before that
22 date.

23 (b) A violation that occurs before the effective date of
24 this Act is governed by the law in effect on the date of the
25 violation, and the former law is continued in effect for that
26 purpose.

27 SECTION 4. This Act takes effect immediately if it receives

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