

By: Creighton

H.B. No. 2535

A BILL TO BE ENTITLED

AN ACT

1
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.

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

23 (e) If the commission issues an emergency order under
24 authority of this section without notice to the dam owner, the
25 commission shall fix a time and place for a hearing which shall be
26 held as soon as practicable to affirm, modify, or set aside the
27 emergency order. The notice does not have to comply with Chapter

1 2001, Government Code. If the nature of the commission's action
2 requires further proceedings, those proceedings shall be conducted
3 as appropriate under Chapter 2001, Government Code [~~the~~
4 ~~Administrative Procedure and Texas Register Act, as amended~~
5 ~~(Article 6252-13a, Vernon's Texas Civil Statutes)~~].

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

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

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

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

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.