

BILL ANALYSIS

Senate Research Center

S.B. 875
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Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the wake of attempted state and federal climate change regulation across the nation, there has emerged a growing trend of attempts to use public nuisance as a means to regulate greenhouse gas emissions. This emerging tactic of public nuisance claims is anticipated to have a severe detrimental impact on businesses across the United States if left unchecked.

S.B. 875 creates an affirmative defense for Texas businesses against enforcement actions citing nuisance and trespass claims arising from greenhouse gas emissions in those cases where the permit holder is in general compliance with a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the Texas Commission on Environmental Quality, the federal government, or an agency of the federal government.

S.B. 875 amends current law relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 7, Water Code, by adding Section 7.257, as follows:

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) Provides that a person, as defined by Section 382.003 (Definition), Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the Texas Natural Resource Conservation Commission (TNRCC) or the federal government or an agency of the federal government and:

- (1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or
- (2) TNRCC or the federal government or an agency of the federal government exercised enforcement discretion in connection with actions that resulted in the alleged nuisance or trespass.

(b) Provides that this section does not apply to nuisance actions solely based on a noxious odor.

SECTION 2. Makes application of Section 7.257, Water Code, as added by this Act, to an administrative enforcement action, a civil action, or a prosecution, prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.