

BILL ANALYSIS

S.B. 875
By: Fraser
Environmental Regulation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There is a concern that public nuisance laws increasingly are being used to address issues relating to greenhouse gas emissions. Many Texas businesses are concerned that enforcement actions citing nuisance and trespass claims arising from greenhouse gas emissions in cases where an environmental permit holder is in general compliance with the requirements of the permit will have a severely detrimental impact on businesses. S.B. 875 seeks to address matters relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 875 amends the Water Code to establish that any legal entity, including an individual, who is subject to an administrative, civil, or criminal enforcement action brought for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the entity'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 Commission on Environmental Quality (TCEQ) or the federal government or an agency of the federal government and the entity was in substantial compliance with that form of authorization while the alleged nuisance or trespass was occurring or TCEQ or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass. The bill makes its provisions inapplicable to nuisance actions related to a noxious odor.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.