

1-1 By: Fraser S.B. No. 875
1-2 (In the Senate - Filed February 23, 2011; March 1, 2011,
1-3 read first time and referred to Committee on Natural Resources;
1-4 March 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 2; March 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 875 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to compliance with state and federal environmental permits
1-11 as a defense to certain actions for nuisance or trespass.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter F, Chapter 7, Water Code, is amended
1-14 by adding Section 7.257 to read as follows:

1-15 Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. A person, as
1-16 defined by Section 382.003, Health and Safety Code, who is subject
1-17 to an administrative, civil, or criminal action brought under this
1-18 chapter for nuisance or trespass arising from greenhouse gas
1-19 emissions has an affirmative defense to that action if the person's
1-20 actions that resulted in the alleged nuisance or trespass were
1-21 authorized by a rule, permit, order, license, certificate,
1-22 registration, approval, or other form of authorization issued by
1-23 the commission or the federal government or an agency of the federal
1-24 government and:

1-25 (1) the person was in general compliance with that
1-26 rule, permit, order, license, certificate, registration, approval,
1-27 or other authorization while the alleged nuisance or trespass was
1-28 occurring; or

1-29 (2) the commission or the federal government or an
1-30 agency of the federal government exercised enforcement discretion
1-31 in connection with the actions that resulted in the alleged
1-32 nuisance or trespass.

1-33 SECTION 2. Section 7.257, Water Code, as added by this Act,
1-34 applies only to an administrative enforcement action, a civil
1-35 action, or a prosecution that is commenced on or after the effective
1-36 date of this Act. An administrative enforcement action, a civil
1-37 action, or a prosecution commenced before the effective date of
1-38 this Act is governed by the law in effect on the date the action or
1-39 prosecution commenced, and that law is continued in effect for that
1-40 purpose.

1-41 SECTION 3. This Act takes effect immediately if it receives
1-42 a vote of two-thirds of all the members elected to each house, as
1-43 provided by Section 39, Article III, Texas Constitution. If this
1-44 Act does not receive the vote necessary for immediate effect, this
1-45 Act takes effect September 1, 2011.

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