

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 25, 2011

TO: Honorable Wayne Smith, Chair, House Committee on Environmental Regulation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1995 by Weber (Relating to the prosecution of certain offenses involving environmental quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would remove Travis County as a possible venue for the criminal prosecution of environmental offenses unless the violation occurred in Travis County or the respondent lives in Travis County. The bill would also change the disposition of fines recovered through criminal prosecution to 90 percent to the state and 10 percent to the local government. However, if a court would determine that a local government bore more of the burden of prosecution, it could apportion up to 25 percent of the fine to the local government.

The Texas Commission on Environmental Quality (TCEQ) reports that under current law courts divide fines recovered equally between the state and any local government significantly involved in prosecuting the case, but that a court can change the allocation and apportion up to 75 percent of the fine to the government (state or local) that predominately prosecuted the case. The TCEQ also reports that it currently funds 1.0 FTE prosecutor position at the Travis County District Attorney's Office, and that the type of environmental prosecution assistance available in Travis County is not available in most other counties. The TCEQ also reports that over the period between 2001 and 2009, the prosecution of environmental criminal cases in Travis County has led to orders of restitution in excess of \$731,089, and that a large portion of the restitution has been used to reimburse remediation costs incurred by the agency. If the TCEQ is required to prosecute environmental crimes in counties where the prosecuting attorney is either unable or unwilling to prosecute environmental criminal cases, the TCEQ expects that it would have no effective means to obtain a remedy for the knowing violations of environmental rules or laws.

It is possible that the bill could result in an increase in revenue to the state because the state's allocation of fine proceeds would increase. However, the bill could also result in a decrease in revenue to the state from penalties because the bill's provision reducing the allocation of fine proceeds to local governments could discourage such entities from prosecuting cases, and some cases could possibly move from state to federal prosecution. However, the gain or loss is not expected to be significant, as the TCEQ reports that revenue received by the state from fines is typically not significant and is highly variable depending on the timing of prosecution, the type of cases prosecuted, and the ability of the defendant to pay the fine.

Local Government Impact

According to TCEQ, there are 334 counties, cities, and special districts that serve as Authorized Agents of the OSSF program. These local governments would see a decrease in revenue under the provisions of the bill.

A criminal conviction under the OSSF program is classified as a Class C misdemeanor with a maximum fine of \$500. The TCEQ reports that fines typically range from \$200 to \$500, and local governments reported 990 convictions during calendar year 2010.

Source Agencies: 582 Commission on Environmental Quality

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