

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

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

IN RE: SB875 by Fraser (Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.), **As Passed 2nd House**

Passage of the bill could result in a decrease in penalty revenues assessed by the Texas Commission on Environmental Quality. The amount of revenue loss would depend on the number of greenhouse gas emissions violators that would effectively use the affirmative defense provided by the bill and the amount of penalties such entities would otherwise have paid.

The bill would provide an affirmative defense to a person who is subject to an administrative, civil, or criminal action brought under Water Code, Chapter 7, for a nuisance or trespass violation arising from greenhouse gas emissions. To use the affirmative defense, the person would have to be in general compliance with the rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring or the person would have to have received enforcement discretion from the Texas Commission on Environmental Quality (TCEQ) or the federal government or an agency of the federal government for the actions that resulted in the alleged nuisance. The bill would not apply to nuisance actions related to noxious odors.

It would also provide an affirmative defense to nuisance or trespass action brought against a person under Health and Safety Code, Section 382.003. Such defenses could not be asserted against the state, a political subdivision, or any other governmental entity of the state.

The Texas Commission on Environmental Quality (TCEQ) reports that the bill could hamper the agency's ability to cite a nuisance violation for greenhouse gases, and it could require a new or amended authorization through a TCEQ enforcement action be removed and the nuisance be allowed to persist. This could result in a reduction in the amount of penalties the agency assesses and collects. The amount of revenue loss would depend on the number of violators that would effectively use the affirmative defense provided by the bill and the amount of penalties such entities would otherwise have paid.

Local Government Impact

The bill could also limit local governments' ability to enforce nuisance violations, which could potentially result in a reduction in penalty revenues, depending on the number of violators that would effectively use the affirmative defense provisions provided in the bill and the amount of penalty fees those violators would have otherwise paid.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, SZ, ZS, TL