

## **BILL ANALYSIS**

C.S.H.B. 1794  
By: Geren  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested persons note that the process allowing local governments to bring lawsuits for penalties and injunctive relief for alleged violations of environmental laws, such as illegal dumping of pollutants and unpermitted waste sites, supplements the enforcement activities of the Texas Commission on Environmental Quality and has been in place for several decades. However, informed observers explain that the ruling in a recent lawsuit in which penalties were assessed against a company for the release of dangerous pollutants into Texas waters has dramatically altered the face of environmental enforcement in Texas. There is concern that the ruling poses a grave threat to the fairness of Texas' environmental enforcement system and, in the long run, Texas' economic competitiveness. C.S.H.B. 1794 seeks to address this concern by amending the applicable law.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

C.S.H.B. 1794 amends the Water Code to limit the amount of a civil penalty that may be assessed against a person in a civil suit brought by a local government in response to certain environmental violations to an amount not less than \$50 and not more than \$25,000 for each day of each violation. The bill caps the total amount of a civil penalty in such a suit brought by a local government at \$4.3 million and expressly does not limit the state's authority to pursue the assessment of a civil penalty under Water Code provisions governing enforcement. The bill requires a trier of fact, in determining the amount of the civil penalty in a civil suit brought by a local government, to consider the factors the Texas Commission on Environmental Quality (TCEQ) is required to consider when determining the amount of an administrative penalty. The bill requires a suit for a civil penalty brought by a local government to be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation notifies TCEQ in writing of the violation or receives a notice of enforcement from TCEQ with respect to the alleged violation.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1794 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subchapter H, Chapter 7, Water Code, is amended by adding Sections 7.359, 7.360, 7.361, 7.362, and 7.363 to read as follows:

Sec. 7.359. MAXIMUM PENALTY. (a) In a suit brought under this subchapter, if the local government proves that a person knowingly or intentionally committed a violation, the person shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation, up to a maximum of 120 days, as the court or jury considers proper.

(b) In a suit brought under this subchapter, if a person is found to have committed a violation and that violation is a continuing violation that exceeds the 120-day duration, the person may be assessed for each violation an additional civil penalty not less than \$50 nor greater than \$1,000 for each day of each violation beyond the 120-day period, as the court or jury considers proper.

(c) The amount of civil penalties assessed under this section is subject to the limitations prescribed by Section 7.361.

No equivalent provision. *(But see Section 7.359 above and Section 7.361 below.)*

Sec. 7.360. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF PENALTY. When determining the amount of a civil penalty to be assessed in a suit brought under this subchapter, the court or jury shall consider the factors in section 7.053.

Sec. 7.361. LIMITATION ON CIVIL PENALTIES. (a) In a suit brought under

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter H, Chapter 7, Water Code, is amended by adding Sections 7.359, 7.360, and 7.361 to read as follows:

No equivalent provision. *(But see Section 7.359 below.)*

Sec. 7.359. LIMITATION ON CIVIL PENALTY. (a) In a suit brought by a local government under this subchapter, a person may be assessed a civil penalty of not less than \$50 and not more than \$25,000 for each day of each violation, provided that the total amount assessed may not exceed \$4.3 million.

(b) This section does not limit the state's authority to pursue the assessment of a civil penalty under this chapter.

Sec. 7.360. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL PENALTY. In determining the amount of a civil penalty to be assessed in a suit brought by a local government under this subchapter, the trier of fact shall consider the factors described by Section 7.053.

No equivalent provision. *(But see Section 7.359 above.)*

this subchapter, a complaining party may recover civil penalties from a person for continuing daily violations at a single site in an amount not to exceed the product of:

(1) the maximum penalty calculated under section 7.359 for each day of each violation; and

(2) 1,460.

(b) Notwithstanding Subsection (a), the complaining party may not recover civil penalties for the time period from the date on which a person initiates written notification and performs any necessary assessment or remediation under a program administered by the commission.

Sec. 7.362. LIMITATIONS. A suit for civil penalties under this subchapter must be brought not later than five years from the earlier of:

(1) the date a person initiates written notification to the commission and otherwise complies with the requirements of Section 7.361(b); or

(2) the date the person received a notice of enforcement from the commission with respect to the alleged violation.

Sec. 7.363. INJUNCTIVE RELIEF NOT AFFECTED. Nothing in this subchapter shall be construed to limit a suit for injunctive relief brought under section 7.351.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Sec. 7.361. LIMITATIONS. A suit for a civil penalty that is brought by a local government under this subchapter must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation:

(1) notifies the commission in writing of the violation; or

(2) receives a notice of enforcement from the commission with respect to the alleged violation.

No equivalent provision.

SECTION 2. The changes in law made by this Act apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

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