

BILL ANALYSIS

Senate Research Center

S.B. 1509
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Natural Resources & Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties 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, the parties contend that the ruling in a recent lawsuit regarding who can be held liable for the release of dangerous pollutants into Texas waters has dramatically altered the face of environmental enforcement in Texas. The parties are concerned that the ruling poses a grave threat to the fairness of Texas' environmental enforcement system and, in the long run, Texas' economic competitiveness.

As proposed, S.B. 1509 amends current law relating to maximum penalties for certain environmental violations.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

Sec. 7.359. MAXIMUM PENALTY. (a) Requires that a person, in a suit brought under this subchapter, if the local government proves that the person knowingly or intentionally committed a violation, 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) Provides that a person, in a suit brought under this subchapter, if the person is found to have committed a violation and that violation is a continuing violation that exceeds the 120-day duration, 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. Provides that each day of a continuing violation is a separate violation.

(c) Requires that civil penalties assessed under Subsection (b) not be calculated beyond 1,340 days from the last date of the 120-day period under Subsection (a).

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

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

Sec. 7.361. LIMITATION ON CIVIL PENALTIES. (a) Authorizes a complaining party, in a suit brought under this subchapter, to recover civil penalties from a person for continuing daily violations at a single site in an amount not to exceed the sum of:

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

(2) the additional penalty calculated under Section 7.359(b) for each day of each violation.

(b) Prohibits the total amount of civil penalties that may be assessed in a suit under this subchapter from exceeding the penalty for each day of each violation for 1,460 days.

(c) Prohibits the complaining party, notwithstanding Subsection (a), from recovering civil penalties from a person for the time period from the date on which a person initiates written notification and performs any necessary assessment or remediation under a program required by the Texas Natural Resource Conservation Commission (TNRCC).

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

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

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

Sec. 7.363. INJUNCTIVE RELIEF NOT AFFECTED. Requires that nothing in this subchapter be construed to limit a suit for injunctive relief brought under Section 7.351 (Civil Suits).

SECTION 2. Effective date: upon passage or September 1, 2015.