

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 25, 2017

TO: Honorable Lyle Larson, Chair, House Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2533 by Geren (relating to civil suits brought by local governments or certain other persons for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2533, Committee Report 1st House, Substituted: a positive impact of \$362,000 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from General Revenue Fund 1
2018	\$0
2019	\$362,000
2020	\$466,000
2021	\$569,000
2022	\$725,000

Fiscal Analysis

The bill would amend Texas Water Code, Chapter 7 by adding Section 7.5311 to require a local government, a person affected, or an authorized agent to provide written notice to the executive director of the Texas Commission on Environmental Quality (TCEQ) and the Attorney General (OAG) before filing a civil suit that seeks a civil penalty; this notice would not be required if the suit seeks injunctive relief only. The written notice would include each alleged violation, the facts supporting the claim, and the specific relief sought. A civil suit may be instituted by a local government, a person affected, or an authorized agent on or after the 90th day after the OAG and the executive director of TCEQ receive the written notice, unless TCEQ has commenced a proceeding or OAG has commenced a civil suit concerning at least one of the alleged violations. If a local government, affected person, or authorized agent discovered the alleged violation within 120 days before a statute of limitations would expire, OAG and TCEQ would be required to review and act on the violations within 45 days, and the entity would be required to provide notice to OAG.

The bill would amend Texas Water Code, Section 7.351, which allows a local government, an affected person, or an authorized agent to bring a suit in the same manner as TCEQ for injunctive relief, civil penalties, or both. The bill would subject Section 7.351 to the added Section 7.5311, which would require written notice prior to filing the civil suit.

The provisions of the bill would apply only to a violation that occurs on or after the effective date of the Act. The bill would take effect September 1, 2017.

Methodology

The bill would allow OAG and TCEQ to deny a local government, affected person, or authorized agent authorization to pursue a suit. OAG estimates that, of the cases referred by TCEQ subject to the provisions of the bill, approximately 10 percent would result in denials. OAG estimates approximately 20 percent of the cases would be initiated as administrative enforcement actions by TCEQ, and that approximately 10 percent of the referred cases would be result in the commencement of a civil suit by OAG. OAG estimates that the remainder of the referrals would be allowed to proceed, leading to suits filed by local governments, affected persons or authorized agents.

This estimate assumes that administrative penalties assessed by TCEQ would be comparable to the civil penalty that would have been assessed by a court under current law and would be deposited to the credit of the General Revenue Fund. This estimate further assumes that the total penalty amount assessed by the court in cases referred to OAG for enforcement would be deposited to the credit of the General Revenue Fund.

OAG estimates that the total number of suits referred for consideration will have a growth rate of approximately 25 percent per year. This would result in 19 referrals in fiscal year 2018; 23 in fiscal year 2019; 29 in fiscal year 2020; 37 in fiscal year 2021; and 48 in fiscal year 2022. Using OAG's estimate concerning the number of cases initiated as administrative enforcement actions by TCEQ and the number of cases that would result in the commencement of a civil suit by OAG, 30 percent of these referrals would result in the collection of either administrative penalties (in the case of TCEQ administrative actions) or civil penalties (in the case of OAG action). This estimate assumes that 30 percent of the referrals would result in revenue gains to the General Revenue Fund, or 3 in fiscal year 2018; 7 in fiscal year 2019; 9 in fiscal year 2020; 11 in fiscal year 2021; and 14 in fiscal year 2022. OAG estimates that fiscal year 2018 revenue collections would not be affected, as it usually takes several months after a violation has occurred to work up and file a

lawsuit. Therefore, this estimate assumes no fiscal impact in fiscal year 2018. Future fiscal years would see a revenue gain approximately equal to the average recovery amount by local governments (\$51,750 according to OAG estimates) per case according to analysis provided by OAG and the Comptroller.

TCEQ and OAG estimate that the provisions of the bill could be implemented using existing resources.

Local Government Impact

According to the Texas Association of Counties, the fiscal impact to counties cannot be determined at this time.

Source Agencies: 302 Office of the Attorney General, 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: UP, SZ, MW, MSO, JSm, JGA