

SENATE AMENDMENTS

2nd Printing

By: Huberty

H.B. No. 907

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the penalty for failure to register certain aggregate
3 production operations with the Texas Commission on Environmental
4 Quality.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 28A.102, Water Code, is amended to read
7 as follows:

8 Sec. 28A.102. PENALTY. The commission may assess a penalty
9 of not less than \$10,000 [~~\$5,000~~] and not more than \$20,000
10 [~~\$10,000~~] for each year in which an aggregate production operation
11 operates without being registered under this chapter. The total
12 penalty under this section may not exceed \$50,000 [~~\$25,000~~] for an
13 aggregate production operation that is operated in three or more
14 years without being registered.

15 SECTION 2. This Act takes effect September 1, 2019.

ADOPTED

MAY 20 2019

Leta Spaw
Secretary of the Senate

Brandon Coe

By: _____

H.B. No. 907

Substitute the following for H.B. No. _____:

Beverly Powell

By: _____

C.S. B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of aggregate production operations by the Texas Commission on Environmental Quality; increasing a fee; increasing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 28A.053, Water Code, is amended to read as follows:

Sec. 28A.053. INSPECTION. (a) The commission shall inspect each active aggregate production operation in this state for compliance with applicable environmental laws and rules under the jurisdiction of the commission:

(1) at least once every two [~~three~~] years during the first six years in which the operation is registered; and

(2) after the expiration of the period described by Subdivision (1), at least once every three years.

(b) Except as provided by Subsection (c), the [The] commission may conduct an inspection only after providing notice to the responsible party in accordance with commission policy.

(c) The commission may conduct unannounced periodic inspections under this section of an aggregate production operation that in the preceding three-year period has been issued a notice of violation by the commission for a violation of an environmental law or rule under the jurisdiction of the commission. The unannounced inspections may be conducted only for a period of not more than one

1 year.

2 (d) An [~~Except as provided by Subsection (d), an~~] inspection
3 must be conducted by one or more inspectors trained in the
4 regulatory requirements [~~under the jurisdiction of the commission~~
5 ~~that are~~] applicable to [~~an~~] active aggregate production operations
6 under the jurisdiction of the commission [~~operation~~]. If the
7 inspection is conducted by more than one inspector, each inspector
8 is not required to be trained in each of the applicable regulatory
9 requirements, but the combined training of the inspectors must
10 include each of the applicable regulatory requirements. The
11 applicable regulatory requirements include requirements related
12 to:

13 (1) individual water quality permits issued under
14 Section 26.027;

15 (2) a general water quality permit issued under
16 Section 26.040;

17 (3) air quality permits issued under Section 382.051,
18 Health and Safety Code; and

19 (4) other regulatory requirements applicable to
20 active aggregate production operations under the jurisdiction of
21 the commission.

22 (e) [~~(d)~~] An investigation in response to a complaint
23 satisfies the requirement of an inspection under this section if a
24 potential noncompliance issue not related to the complaint is
25 observed and is:

26 (1) not within an area of expertise of the
27 investigator but is referred by the investigator to the commission

1 for further investigation; or

2 (2) within an area of expertise of the inspector and is
3 appropriately investigated and appropriately addressed in the
4 investigation report.

5 SECTION 2. Section 28A.101(b), Water Code, is amended to
6 read as follows:

7 (b) The commission shall set the annual registration fee in
8 an amount sufficient to maintain a registry of active aggregate
9 production operations in this state and implement this chapter, not
10 to exceed \$1,500 [~~\$1,000~~].

11 SECTION 3. Section 28A.102, Water Code, is amended to read
12 as follows:

13 Sec. 28A.102. PENALTY. The commission may assess a penalty
14 of not less than \$5,000 and not more than \$20,000 [~~\$10,000~~] for each
15 year in which an aggregate production operation operates without
16 being registered under this chapter. The total penalty under this
17 section may not exceed \$40,000 [~~\$25,000~~] for an aggregate
18 production operation that is operated in three or more years
19 without being registered.

20 SECTION 4. Section 28A.102, Water Code, as amended by this
21 Act, applies only to a penalty assessed on or after the effective
22 date of this Act. A penalty assessed before the effective date of
23 this Act is governed by the law in effect on the date the penalty was
24 assessed, and the former law is continued in effect for that
25 purpose.

26 SECTION 5. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB907 by Huberty (Relating to the regulation of aggregate production operations by the Texas Commission on Environmental Quality; increasing a fee; increasing administrative penalties.), **As Passed 2nd House**

<p>The fiscal implications to the State cannot be determined because the number of violations that would occur under a higher maximum penalty and the penalty that would be assessed for individual violations under the new maximum is unknown.</p>

The bill would amend the Water Code to require the Texas Commission on Environmental Quality (TCEQ) to investigate aggregate production operations (APOs) every two years instead of every three years during the first six years in which the operation is registered and at least once every three years under circumstances described in the bill. The bill would allow TCEQ to conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period.

The bill would increase the maximum annual registration fee for APOs from \$1,000 to \$1,500 and would increase the maximum penalty assessed to an unregistered APO from \$10,000 to \$20,000 for each year that the APO operates without a registration. The bill would increase the maximum allowable total penalty for an APO enforcement case from \$25,000 to \$40,000. The amount of additional penalty revenue that would be deposited to the credit of the General Revenue Fund cannot be estimated at this time because the number of violations that would occur under a higher maximum penalty and the penalty that would be assessed for individual violations under the new maximum is unknown.

Based on information provided by the TCEQ, this estimate assumes that the additional costs identified by TCEQ as necessary to meet the anticipated increase in comprehensive compliance inspections under the provisions of the bill could be absorbed with available resources.

Local Government Impact

According to TCEQ, any local or governmental entities operating APOs, as defined by the Texas Water Code, would be subject to the increased inspections, registration fees, and penalties resulting from this bill. By statutory definition, APOs do not include "temporary sites that are being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation or a local governmental entity.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: WP, SD, GDz, SZ, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 17, 2019

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB907** by Huberty (Relating to the regulation of aggregate production operations by the Texas Commission on Environmental Quality; increasing a fee; increasing administrative penalties.), **Committee Report 2nd House, Substituted**

The fiscal implications to the State cannot be determined because the number of violations that would occur under a higher maximum penalty and the penalty that would be assessed for individual violations under the new maximum is unknown.

The bill would amend the Water Code to require the Texas Commission on Environmental Quality (TCEQ) to investigate aggregate production operations (APOs) every two years instead of every three years during the first six years in which the operation is registered and at least once every three years under circumstances described in the bill. The bill would allow TCEQ to conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period.

The bill would increase the maximum annual registration fee for APOs from \$1,000 to \$1,500 and would increase the maximum penalty assessed to an unregistered APO from \$10,000 to \$20,000 for each year that the APO operates without a registration. The bill would increase the maximum allowable total penalty for an APO enforcement case from \$25,000 to \$40,000. The amount of additional penalty revenue that would be deposited to the credit of the General Revenue Fund cannot be estimated at this time because the number of violations that would occur under a higher maximum penalty and the penalty that would be assessed for individual violations under the new maximum is unknown.

Based on information provided by the TCEQ, this estimate assumes that the additional costs identified by TCEQ as necessary to meet the anticipated increase in comprehensive compliance inspections under the provisions of the bill could be absorbed with available resources.

Local Government Impact

According to TCEQ, any local or governmental entities operating APOs, as defined by the Texas Water Code, would be subject to the increased inspections, registration fees, and penalties resulting from this bill. By statutory definition, APOs do not include "temporary sites that are being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation or a local governmental entity.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public
Accounts

LBB Staff: WP, GDz, SZ, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 15, 2019

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB907 by Huberty (Relating to the penalty for failure to register certain aggregate production operations with the Texas Commission on Environmental Quality.), As Engrossed

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Water Code to increase the penalty amounts for aggregate production operations that operate without registration by increasing the minimum penalty from \$5,000 to \$10,000 and the maximum penalty from \$10,000 to \$20,000 each year in which operations are performed without registration. In addition, the maximum limit of the total penalty assessed would increase from \$25,000 to \$50,000 for an operator that has operated in three or more years without registration.

Based on an analysis of the historical administrative penalties assessed by the Texas Commission on Environmental Quality (TCEQ) as provided by TCEQ, the increase in revenues from assessed penalties is not anticipated to be significant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, GDz, PM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 16, 2019

TO: Honorable J. M. Lozano, Chair, House Committee on Environmental Regulation

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB907 by Huberty (Relating to the penalty for failure to register certain aggregate production operations with the Texas Commission on Environmental Quality.), **As Introduced**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Water Code to increase the penalty amounts for aggregate production operations that operate without registration by increasing the minimum penalty from \$5,000 to \$10,000 and the maximum penalty from \$10,000 to \$20,000 each year in which operations are performed without registration. In addition, the maximum limit of the total penalty assessed would increase from \$25,000 to \$50,000 for an operator that has operated in three or more years without registration.

Based on an analysis of the historical administrative penalties assessed by the Texas Commission on Environmental Quality (TCEQ) as provided by TCEQ, the increase in revenues from assessed penalties is not anticipated to be significant.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: WP, SZ, MW, GDz, PM