

SUBJECT: Consolidation of TNRCC enforcement authority

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — Chisum, Allen, Culberson, Dukes, Howard, Palmer, Zbranek
0 nays
2 absent — Kuempel, Talton

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 15 — 30-0

WITNESSES: No public hearing

DIGEST: SB 1309 would make a number of changes to Chapter 7 of the Water Code, governing TNRCC's general enforcement authority. The bill would move some provisions from other parts of the code so they would apply consistently in all cases, and expand the definitions in Chapter 7 to include cross references to dozens of definitions found elsewhere in the Health and Safety Code and the Water Code.

SB 1309 would repeal a provision concerning mandatory enforcement hearings for Water Code violations, and provide that payment of administrative penalties would preclude criminal penalties for the same violation unless TNRCC provided notice to the alleged violator, before payment of the penalty, of the agency's intent to prosecute criminally.

The bill would provide that certain criminal penalties for violations of septic tank regulations would be expanded to apply statewide rather than just along the Texas-Mexico border, and certain cities and counties could institute civil suits against those violating septic tank rules.

The bill would make clarifications relating to incarceration for criminal offenses, adding that a person would be punishable by confinement or imprisonment, rather than just confinement as current law provides. The bill would specify whether that time would be spent in jail or in a facility of the Texas Department of Criminal Justice (TDCJ), and specify terms of confinement or imprisonment.

TNRCC's commission could call a public hearing and issue orders on an alleged violation within TNRCC's jurisdiction or under a rule, order, permit or other commission decision, or could take any other action. The commission could take a number of actions at such a hearing including administering oaths, receiving evidence, issuing subpoenas to compel the attendance of witnesses, and making findings of fact.

The state would be required to deposit its part of a civil penalty recovered in a suit brought by a local government for violation of Chapter 371 of the Health and Safety Code governing Used Oil Collection and Recycling, to the credit of the Used Oil Recycling Account.

The bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

SB 1309 would continue the consolidation and simplification of TNRCC's enforcement statutes that began last session with enactment of SB 1876 by Bivins. Additional consolidation of TNRCC's enforcement authority would provide consistency for the both the agency and the regulated community. Streamlining the enforcement process at TNRCC has resulted in greater consistency and fairness in penalty calculation and greater public awareness of enforcement actions taken by the agency.

Most of the changes suggested by the bill are included in recommendations made to the 76th Legislature by the Senate Interim Committee on Natural Resources.

Adding references to definitions found elsewhere in the Health and Safety Code and the Water Code to Chapter 7 would minimize confusion for the general public as well as for local prosecutors pursuing environmental cases.

The bill would clarify current law concerning criminal offenses and penalties. Current law refers only to confinement and does not mention TDCJ facilities. By adding this reference, SB 1309 would clarify which penalties refer to misdemeanors and which to felonies.

The bill also would clarify that once an administrative penalty was paid, a criminal penalty would be precluded unless TNRCC, before payment was made, provided notice to the alleged violator of the agency's intent to criminally prosecute. This would follow recent case law that has indicated

that an administrative penalty does not preclude a civil or criminal penalty. It would give TNRCC flexibility to apply both administrative and criminal penalties in the rare case where that would be warranted.

A current statutory provision concerning penalties for violations concerning septic systems would be broadened to apply statewide rather than just in a county that was contiguous to an international border. There is no reason why this type of violation should only be an offense in a county near the border.

The bill would repeal a mandatory enforcement provision that is inconsistent with other TNRCC enforcement mechanisms, and actually hinders TNRCC from taking an enforcement action in response to a serious violation of a public water supply.

The bill would provide that in the case of a violation concerning a septic system that occurred in the jurisdiction of a local government, cities and counties meeting certain requirements could institute civil suits for injunctive relief or civil penalty or both against persons committing the violations. This would help local governments prosecute people who are installing or maintaining septic systems improperly.

OPPONENTS
SAY:

No apparent opposition.