

BILL ANALYSIS

Senate Research Center
76R10949 MI-D

C.S.S.B. 1309
By: Brown
Natural Resources
4/1/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law consolidates the emergency order and enforcement authority of the Texas Natural Resource Conservation Commission (commission) into Chapters 5 and 7 of the Water Code. The Senate Interim Committee on Natural Resources received an interim charge to monitor the implementation of this order. C.S.S.B. 1309 would authorize technical corrections necessary to complete the consolidation of the commission's emergency order and enforcement authority.

PURPOSE

As proposed, C.S.S.B. 1309 clarifies issues involving the consolidation of the enforcement authority of the Texas Natural Resource Conservation Commission.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.002, Water Code, to authorize the Texas Natural Resource Conservation Commission (commission) to initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules, orders, permits, or other decisions adopted under those provisions. Authorizes the commission to call and hold a public hearing and issue orders on an alleged violation under this code or the Health and Safety Code within the commission's jurisdiction or under a rule, order, permit, or other decision of the commission, or take any other action authorized by this chapter as the facts may warrant. Authorizes the commission to administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this code and the Health and Safety Code within the commission's jurisdiction or the rules, orders, or other decisions of the commission.

SECTION 2. Amends Section 7.068, Water Code, to provide that payment of an administrative penalty under this subchapter precludes any other civil penalty for the same violation and precludes any criminal penalty for the same violation unless the commission, before the payment of the administrative penalty, has provided notice to the alleged violator of the agency's intent to prosecute criminally. Deletes text providing that payment of an administrative penalty is full and complete satisfaction of the violation.

SECTION 3. Amends Section 7.107, Water Code, to require the state to deposit its part of a penalty recovered in a suit brought by a local government for a violation of Chapter 371, Health and Safety Code, or a rule or order adopted under that chapter to the credit of the used oil recycling account.

SECTION 4. Amends Section 7.141, Water Code, to define "air contaminant," "class I industrial solid waste," "class I nonhazardous industrial solid waste," "discharge," "hazardous waste," "industrial solid waste," "municipal solid waste," "on-site sewage disposal system," "point source," "pollutant," "pollution," "processing," "release," "solid waste," "solid waste facility," "underground storage tank," "used oil," "waste," and "water." Makes conforming changes.

SECTION 5. Amends Section 7.173, Water Code, as follows:

Sec. 7.173. New heading: VIOLATION RELATING TO SEWAGE DISPOSAL. Deletes text regarding a county that is contiguous to an international border.

SECTION 6. Amends Section 7.187, Water Code, to provide that a person convicted of an offense under this chapter is punishable by confinement or imprisonment for a period as imposed by the section creating the offense of not more than a certain amount of days in jail. Defines “institutional division.”

SECTION 7. Amends Section 7.351, Water Code, to authorize an authorized agent as defined in Chapter 366, Health and Safety Code, to institute a civil suit under Subchapter D in the same manner as the commission by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation, if it appears that violation or threat of violation of Chapter 366, Health and Safety Code, under the commission’s jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government. Deletes text providing that if it appears that a violation of a provision of Chapter 366, Health and Safety Code, under the jurisdiction of an authorized agent as defined by Section 366.002, Health and Safety Code, has occurred, a person affected may institute a civil suit in the same manner as the commission, rather than in a district court.

SECTION 8. Amends Sections 361.017(d) and (e), Health and Safety Code, to delete text requiring the commission to consult with the attorney general’s office.

SECTION 9. Amends Section 366.016, Health and Safety Code, to authorize the commission or authorized agent to issue an emergency order concerning an on-site sewage disposal system under Section 5.513, rather than 5.517, Water Code.

SECTION 10. Amends Section 382.015(d), Health and Safety Code, to entitle the commission to the remedies provided by Chapter 5L, Water Code, and Subchapters B, C, and D, Chapter 7, Water Code, rather than Sections 382.082-382.085 if a member employee, or agent is refused the right to enter public or private property as provided by this section.

SECTION 11. Amends Section 382.023(b), Health and Safety Code, to authorize the executive director if authorized by the commission or this chapter to proceed under Subchapter B, C, or D, Chapter 7, Water Code, or hold a public hearing and issue orders on the alleged violation, or take any other action authorized by this chapter as the facts may warrant.

SECTION 12. Repealers: Section 5.117, Water Code (Mandatory Enforcement Hearing); Section 7.068, Water Code (Full and Complete Satisfaction); Section 26.2171, Water Code (Venue); Section 371.043, Health and Safety Code (Civil Penalty).

SECTION 13. Effective date: September 1, 1999.

SECTION 14. Makes application of this Act prospective. Provides that the change in law relating to court jurisdiction made by Section 7.351, Water Code, prevails over an amendment to that section by any other Act of the 76th Legislature, Regular Session, 1999, regardless of the relative dates of enactment.

SECTION 15. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 7.068, Water Code, to provide that payment of an administrative penalty under this subchapter precludes any other civil penalty for the same violation and precludes any criminal penalty for the same violation unless the commission, before the payment of the administrative penalty, has provided notice to the alleged violator of the agency’s intent to prosecute criminally. Deletes text providing that payment of an administrative penalty is full and complete satisfaction of the violation. Redesignates existing SECTIONS accordingly.

SECTION 7.

Amends Section 7.351, Water Code to authorize an authorized agent as defined in Chapter 366, Health and Safety Code, to institute a civil suit under Subchapter D in the same manner as the commission by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the

violation, if it appears that violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government. Deletes text providing that if it appears that a violation of a provision of Chapter 366, Health and Safety Code, under the jurisdiction of an authorized agent as defined by Section 366.002, Health and Safety Code, has occurred, a person affected may institute a civil suit in the same manner as the commission, rather than in a district court.

SECTION 14.

Provides that the change in law relating to court jurisdiction made by Section 7.351, Water Code, prevails over an amendment to that section by any other Act of the 76th Legislature, Regular Session, 1999, regardless of the relative dates of enactment.