

BILL ANALYSIS

Senate Research Center

S.B. 1265
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Natural Resources
8/6/2003
Enrolled

DIGEST AND PURPOSE

Until 1997, the predecessor agency to the Texas Commission on Environmental Quality (TCEQ) and the Office of the Attorney General (OAG) were required to be involved in a decision to criminally prosecute violations of the Texas Clean Air Act. Currently, no such process is required under any state environmental crime provisions. S.B. 1265 requires a peace officer to notify TCEQ in writing of the alleged violation. TCEQ is then required to evaluate the report, determine if an environmental violation exists, and determine an adequate remedy. This bill only applies to cases in which the potential defendant holds a permit by TCEQ or is employed by a person holding such a permit.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. PURPOSE. Provides that the purpose of this Act is to ensure statewide consistency in the interpretation and enforcement of environmental laws.

SECTION 2. AMENDMENT. Amends Subchapter E, Chapter 7, Water Code, by adding Section 7.203, as follows:

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) Provides that this section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit or other decision of the Texas Commission on Environmental Quality (TCEQ) that is within TCEQ's jurisdiction committed by a defendant holding a permit issued by TCEQ or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. Provides that it is an exception to the application of this section that the alleged environmental violation clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Provides that nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Requires that before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, refers any alleged criminal environmental violation by a person holding a permit issued by TCEQ or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit or other decision of TCEQ that is within TCEQ's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer notify TCEQ in writing of the alleged criminal environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. Provides that this section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) Requires TCEQ, as soon as practicable and in no event later than the 45th day after receiving a notice and report under Subsection (b), to evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would adequately and appropriately address the

alleged environmental violation. Requires TCEQ, in making its evaluation and determination, to consider factors prescribed by Section 7.053. Sets forth the actions to be taken if TCEQ does not make a determination within the 45-day period required by this subsection.

(d) Requires TCEQ, if TCEQ determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, to so notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and authorizes the prosecuting attorney to proceed with the criminal prosecution of the alleged violation. Requires TCEQ, in all other cases, to issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. Prohibits a prosecuting attorney from prosecuting an alleged violation if TCEQ determines that administrative or civil remedies are adequate and appropriate.

(e) Requires any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, to be apportioned 70 percent to the state to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. Provides that in a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

SECTION 3. TRANSITION. Requires TCEQ, not later than six months after the effective date of this Act, by rule, to establish procedures to fulfill the requirements of Subsections (a) through (d), Section 7.203, Water Code, as added by this Act, and to ensure an objective and unbiased process.

SECTION 4. Effective date: upon passage or September 1, 2003.