

By: Capelo

H.B. No. 3164

Substitute the following for H.B. No. 3164:

By: Smith of Harris

C.S.H.B. No. 3164

A BILL TO BE ENTITLED

AN ACT

relating to prosecution of environmental crimes.

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

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

SECTION 2. AMENDMENT. Subchapter E, Chapter 7, Water Code, is amended by adding Section 7.203 to read as follows:

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) 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 commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit. 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.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation of this code, of the Health and Safety Code, or of any other statute, rule, order, permit or other decision of the commission that is within the commission's

1 jurisdiction to a prosecuting attorney for criminal prosecution,
2 the peace officer shall notify the commission in writing of the
3 alleged criminal environmental violation and include with the
4 notification a report describing the facts and circumstances of the
5 alleged criminal environmental violation.

6 (c) As soon as practicable and in no event later than the
7 60th day after receiving a notice and report under Subsection (b),
8 the commission shall evaluate the report and determine whether an
9 alleged environmental violation exists and whether administrative
10 or civil remedies would adequately and appropriately address the
11 alleged environmental violation. In making its evaluation and
12 determination, the commission shall consider the factors
13 prescribed in Section 7.053.

14 (d) If the commission determines that an alleged
15 environmental violation exists and that administrative or civil
16 remedies are inadequate or inappropriate to address the violation,
17 the commission shall so notify the peace officer in writing of the
18 reasons why administrative or civil remedies are inadequate or
19 inappropriate and recommending criminal prosecution. In all other
20 cases, the commission shall issue written notification to the peace
21 officer that the alleged environmental violation is to be resolved
22 through administrative or civil means by the appropriate
23 authorities.

24 (e) Any fine, penalty, or settlement recovered through a
25 prosecution subject to this section and brought in the name and by
26 authority of the State of Texas, whether recovered through any form
27 of pretrial resolution, plea agreement, or sentencing after trial,

1 shall be apportioned 80 percent to the state to cover the costs of
2 instituting the procedures and requirements of Subsections (a)-(d)
3 and 20 percent to any local government significantly involved in
4 prosecuting the case. In a case where the procedures described in
5 this section do not apply, the provisions of Section 7.190 apply.

6 SECTION 3. TRANSITION. Not later than six months after the
7 effective date of this Act, the Texas Commission on Environmental
8 Quality by rule shall establish procedures to fulfill the
9 requirements of Subsections (a) through (d), Section 7.203, Water
10 Code, as added by this Act, and to ensure an objective and unbiased
11 process.

12 SECTION 4. EFFECTIVE DATE. This Act takes effect
13 immediately if it receives a vote of two-thirds of all the members
14 elected to each house, as provided by Section 39, Article III, Texas
15 Constitution. If this Act does not receive the vote necessary for
16 immediate effect, this Act takes effect September 1, 2003.