

1-1 By: Armbrister S.B. No. 1265  
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 14, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 14, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1265 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to prosecution of environmental crimes.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. PURPOSE. The purpose of this Act is to ensure  
1-13 statewide consistency in the interpretation and enforcement of  
1-14 environmental laws.

1-15 SECTION 2. AMENDMENT. Subchapter E, Chapter 7, Water Code,  
1-16 is amended by adding Section 7.203 to read as follows:

1-17 Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) This section  
1-18 is applicable to criminal prosecution of alleged environmental  
1-19 violations of this code, of the Health and Safety Code, or of any  
1-20 other statute, rule, order, permit, or other decision of the  
1-21 commission that is within the commission's jurisdiction committed  
1-22 by a defendant holding a permit issued by the commission or a  
1-23 defendant employed by a person holding such a permit. It is an  
1-24 exception to the application of this section that the alleged  
1-25 environmental violation clearly involves imminent danger of death  
1-26 or bodily injury under an endangerment offense specified in Section  
1-27 7.252.

1-28 (b) Before a peace officer, as that term is defined in  
1-29 Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer  
1-30 any alleged criminal environmental violation of this code, of the  
1-31 Health and Safety Code, or of any other statute, rule, order,  
1-32 permit, or other decision of the commission that is within the  
1-33 commission's jurisdiction to a prosecuting attorney for criminal  
1-34 prosecution, the peace officer shall notify the commission in  
1-35 writing of the alleged criminal environmental violation and include  
1-36 with the notification a report describing the facts and  
1-37 circumstances of the alleged criminal environmental violation.

1-38 (c) As soon as practicable and in no event later than the  
1-39 60th day after receiving a notice and report under Subsection (b),  
1-40 the commission shall evaluate the report and determine whether an  
1-41 alleged environmental violation exists and whether administrative  
1-42 or civil remedies would adequately and appropriately address the  
1-43 alleged environmental violation. In making its evaluation and  
1-44 determination, the commission shall consider the factors  
1-45 prescribed in Section 7.053.

1-46 (d) If the commission determines that an alleged  
1-47 environmental violation exists and that administrative or civil  
1-48 remedies are inadequate or inappropriate to address the violation,  
1-49 the commission shall notify the peace officer in writing of the  
1-50 reasons why administrative or civil remedies are inadequate or  
1-51 inappropriate and recommending criminal prosecution. In all other  
1-52 cases, the commission shall issue written notification to the peace  
1-53 officer that the alleged environmental violation is to be resolved  
1-54 through administrative or civil means by the appropriate  
1-55 authorities.

1-56 (e) Any fine, penalty, or settlement recovered through a  
1-57 prosecution subject to this section and brought in the name and by  
1-58 authority of the State of Texas, whether recovered through any form  
1-59 of pretrial resolution, plea agreement, or sentencing after trial,  
1-60 shall be apportioned 80 percent to the state to cover the costs of  
1-61 instituting the procedures and requirements of Subsections (a)-(d)  
1-62 and 20 percent to any local government significantly involved in  
1-63 prosecuting the case. In a case where the procedures described in

this section do not apply, the provisions of Section 7.190 apply.

SECTION 3. TRANSITION. Not later than six months after the effective date of this Act, the Texas Commission on Environmental Quality by rule shall 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. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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