

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

By: Geren, Harless, Burkett, Longoria,  
Murphy, et al.

H.B. No. 1794

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to suits brought by local governments for violations of  
3 certain laws under the jurisdiction of, or rules adopted or orders  
4 or permits issued by, the Texas Commission on Environmental  
5 Quality; affecting civil penalties.

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

7 SECTION 1. Section 7.107, Water Code, is amended to read as  
8 follows:

9 Sec. 7.107. DIVISION OF CIVIL PENALTY. Except in a suit  
10 brought for a violation of Chapter 28 of this code or of Chapter  
11 401, Health and Safety Code, a civil penalty recovered in a suit  
12 brought under this subchapter by a local government shall be  
13 ~~[equally]~~ divided as follows ~~[between]~~:

14 (1) the first \$4.3 million of the amount recovered  
15 shall be divided equally between:

16 (A) the state; and

17 (B) ~~[(2)]~~ the local government that brought the  
18 suit; and

19 (2) any amount recovered in excess of \$4.3 million  
20 shall be awarded to the state.

21 SECTION 2. Subchapter H, Chapter 7, Water Code, is amended  
22 by adding Sections 7.359, 7.360, and 7.361 to read as follows:

23 Sec. 7.359. LIMITATION ON CIVIL PENALTY. (a) Except as  
24 provided by Subsection (b), in a suit brought by a local government

1 under this subchapter, a person may be assessed a civil penalty of  
2 not less than \$50 and not more than \$25,000 for each day of each  
3 violation, provided that the amount assessed may not exceed \$4.3  
4 million.

5 (b) This section does not limit the state's authority to  
6 pursue the assessment of a civil penalty under this chapter.

7 Sec. 7.360. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT  
8 OF CIVIL PENALTY. In determining the amount of a civil penalty to  
9 be assessed in a suit brought by a local government under this  
10 subchapter, the trier of fact shall consider the factors described  
11 by Section 7.053.

12 Sec. 7.361. LIMITATIONS. A suit for a civil penalty that is  
13 brought by a local government under this subchapter must be brought  
14 not later than the fifth anniversary of the earlier of the date the  
15 person who committed the violation:

16 (1) notifies the commission in writing of the  
17 violation; or

18 (2) receives a notice of enforcement from the  
19 commission with respect to the alleged violation.

20 SECTION 3. The changes in law made by this Act apply only to  
21 a violation that occurs on or after the effective date of this Act.  
22 A violation that occurs before the effective date of this Act is  
23 governed by the law in effect on the date the violation occurred,  
24 and the former law is continued in effect for that purpose.

25 SECTION 4. This Act takes effect September 1, 2015.

# ADOPTED

MAY 20 2015

*Leta Staw*  
Secretary of the Senate

By: Ceren

H.B. No. 1794

Substitute the following for H.B. No. 1794 :

By: *Kelly Harman*

C.S. \_\_\_ B. No. \_\_\_\_\_

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11 401, Health and Safety Code, a civil penalty recovered in a suit  
12 brought under this subchapter by a local government shall be  
13 ~~equally~~ divided as follows ~~between~~:

14 (1) the first \$4.3 million of the amount recovered  
15 shall be divided equally between:

16 (A) the state; and

17 (B) ~~[(2)]~~ the local government that brought the  
18 suit; and

19 (2) any amount recovered in excess of \$4.3 million  
20 shall be awarded to the state.

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22 by adding Sections 7.359 and 7.360 to read as follows:

23 Sec. 7.359. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT  
24 OF CIVIL PENALTY. In determining the amount of a civil penalty to

1 be assessed in a suit brought by a local government under this  
2 subchapter, the trier of fact shall consider the factors described  
3 by Section 7.053.

4 Sec. 7.360. LIMITATIONS. A suit for a civil penalty that is  
5 brought by a local government under this subchapter must be brought  
6 not later than the fifth anniversary of the earlier of the date the  
7 person who committed the violation:

8 (1) notifies the commission in writing of the  
9 violation; or

10 (2) receives a notice of enforcement from the  
11 commission with respect to the alleged violation.

12 SECTION 3. The changes in law made by this Act apply only to  
13 a violation that occurs on or after the effective date of this Act.  
14 A violation that occurs before the effective date of this Act is  
15 governed by the law in effect on the date the violation occurred,  
16 and the former law is continued in effect for that purpose.

17 SECTION 4. This Act takes effect September 1, 2015.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 21, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1794** by Geren (Relating to suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality; affecting civil penalties.), **As Passed 2nd House**

**The fiscal implications of the bill cannot be determined. The bill could result in an increase in civil penalty revenues to the state and a corresponding decrease in civil penalty collections by local governments; however, the amount of civil penalties that will be assessed can not be determined.**

The bill would stipulate that for violations of Water Code, Chapter 28, and Health and Safety Code, Chapter 401, the first \$4.3 million of an amount recovered shall be divided equally between the state and local government that brought the lawsuit. Any amount in excess of \$4.3 million would be awarded to the state. The bill would also prescribe certain factors to be considered in determining the amount of a civil penalty in a suit brought by a local governments relating to a permit issued by the Texas Commission on Environmental Quality (TCEQ), and it would require that a local government would bring forth a lawsuit under certain time limitations.

The bill would limit the amount that a local government can receive from certain lawsuits to one-half of \$4.3 million or \$2,150,000 per lawsuit. Under current law, the state and local government share equally in such lawsuit awards. Upon enactment of the bill, in the case of a lawsuit with an award in excess of \$4.3 million, the state would receive additional revenues, while a local government would receive less revenue. Because there is no way to determine the amount of lawsuit awards that would be affected by the bill's provisions, the fiscal impact cannot be estimated.

No significant fiscal implications to the TCEQ are expected as a result of the bill's passage.

The bill would take effect September 1, 2015.

**Local Government Impact**

There may be an impact to local governments resulting from civil penalties, however, as the number of cases and associated penalties awarded are unknown, their fiscal impacts cannot be determined.

**Source Agencies:** 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

**LBB Staff:** UP, SD, TL, SZ, MW, KVe

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 12, 2015**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources & Economic Development

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1794** by Geren (relating to suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality; affecting civil penalties.), **Committee Report 2nd House, Substituted**

**The fiscal implications of the bill cannot be determined. The bill could result in an increase in civil penalty revenues to the state and a corresponding decrease in civil penalty collections by local governments; however, the amount of civil penalties that will be assessed can not be determined.**

The bill would stipulate that for violations of Water Code, Chapter 28, and Health and Safety Code, Chapter 401, the first \$4.3 million of an amount recovered shall be divided equally between the state and local government that brought the lawsuit. Any amount in excess of \$4.3 million would be awarded to the state. The bill would also prescribe certain factors to be considered in determining the amount of a civil penalty in a suit brought by a local governments relating to a permit issued by the Texas Commission on Environmental Quality (TCEQ), and it would require that a local government would bring forth a lawsuit under certain time limitations.

The bill would limit the amount that a local government can receive from certain lawsuits to one-half of \$4.3 million or \$2,150,000 per lawsuit. Under current law, the state and local government share equally in such lawsuit awards. Upon enactment of the bill, in the case of a lawsuit with an award in excess of \$4.3 million, the state would receive additional revenues, while a local government would receive less revenue. Because there is no way to determine the amount of lawsuit awards that would be affected by the bill's provisions, the fiscal impact cannot be estimated.

No significant fiscal implications to the TCEQ are expected as a result of the bill's passage.

The bill would take effect September 1, 2015.

**Local Government Impact**

There may be an impact to local governments resulting from civil penalties, however, as the number of cases and associated penalties awarded are unknown, their fiscal impacts cannot be determined.

**Source Agencies:** 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

**LBB Staff:** UP, TL, SZ, MW, KVe

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 11, 2015**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources & Economic Development

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB1794** by Geren (Relating to suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality; affecting civil penalties.), **As Engrossed**

**The fiscal implications of the bill cannot be determined. The bill could result in an increase in civil penalty revenues to the state and a corresponding decrease in civil penalty collections by local governments; however, the amount of civil penalties that will be assessed can not be determined.**

The bill would stipulate that for violations of Water Code, Chapter 28, and Health and Safety Code, Chapter 401, the first \$4.3 million of an amount recovered shall be divided equally between the state and local government that brought the lawsuit. Any amount in excess of \$4.3 million would be awarded to the state.

The bill would limit civil penalty amounts that can be assessed in necessary and indispensable party (NIP) suits brought against a person under Water Code, Subchapter H, to not less than \$50 and not more than \$25,000 for each day of each violation, provided that the total assessed does not exceed \$4.3 million. The bill specifies that the state's authority to pursue civil penalty under Water Code, Chapter 7, would not be limited by this provision. The bill provides local governments consider certain factors when determining the amount of civil penalties to be assessed, and it would require that civil penalty suits be brought forth no later than five years after the violation was committed.

The bill would limit the amount that a local government can receive from certain lawsuits to one-half of \$4.3 million or \$2,150,000 per lawsuit. Under current law, the state and local government share equally in such lawsuit awards. Upon enactment of the bill, in the case of a lawsuit with an award in excess of \$4.3 million, the state would receive additional revenues, while a local government would receive less revenue. Because there is no way to determine the amount of lawsuit awards that would be affected by the bill's provisions, the fiscal impact cannot be estimated.

The TCEQ reports that with the enactment of the bill's civil penalty maximums under Water Code, Subchapter H, civil penalty revenues could decrease. Since civil penalty payments are split equally between the state and local governments, with the state portion being deposited to the General Revenue Fund, there could be some loss in General Revenue to the state. The loss would depend on the number of NIP cases in a given year and whether penalties in such cases would otherwise exceed the civil penalty maximums proposed by the bill. Based on the information

provided by the TCEQ, any revenue loss from the bill's provision limiting would not be significant.

The bill would take effect September 1, 2015.

**Local Government Impact**

There may be an impact to local governments resulting from civil penalties, however, as the number of cases and associated penalties awarded are unknown, their fiscal impacts cannot be determined.

**Source Agencies:** 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

**LBB Staff:** UP, TL, SZ, MW, KVe

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 1, 2015**

**TO:** Honorable Geanie Morrison, Chair, House Committee on Environmental Regulation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB1794** by Geren (relating to suits brought by local governments for violations of certain laws under the jurisdiction of, or rules adopted or orders or permits issued by, the Texas Commission on Environmental Quality; affecting civil penalties.), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would limit civil penalty amounts that can be assessed in necessary and indispensable party (NIP) suits brought against a person under Water Code, Subchapter H, to not less than \$50 and not more than \$25,000 for each day of each violation, provided that the total assessed does not exceed \$4.3 million. The bill specifies that the state's authority to pursue civil penalty under Water Code, Chapter 7, would not be limited by this provision. The bill provides local governments consider certain factors when determining the amount of civil penalties to be assessed, and it would require that civil penalty suits be brought forth no later than five years after the violation was committed.

The TCEQ reports that with the enactment of the bill's civil penalty maximums, civil penalty revenues could decrease. Since civil penalty payments are split equally between the state and local governments, with the state portion being deposited to the General Revenue Fund, there could be some loss in General Revenue to the state. The loss would depend on the number of NIP cases in a given year and whether penalties in such cases would otherwise exceed the civil penalty maximums proposed by the bill. Based on the information provided by the TCEQ, any revenue loss would not be significant.

**Local Government Impact**

There may be an impact to local governments resulting from civil penalties, however, as the number of cases and associated penalties awarded are unknown, their fiscal impacts cannot be determined.

**Source Agencies:** 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

**LBB Staff:** UP, TL, SZ, MW, KVe

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**March 16, 2015**

**TO:** Honorable Geanie Morrison, Chair, House Committee on Environmental Regulation

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1794** by Geren (Relating to maximum penalties for certain environmental violations.),  
**As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would limit civil penalty amounts that can be assessed in suits brought against a person under Water Code, Subchapter H. The bill would also limit the timeframe during which a necessary and indispensable party (NIP) suit for civil penalties must be brought, and it would require that violations must be committed knowingly or intentionally. The bill also would provide that a complaining party may not assess civil penalties against a person on or after the date on which a person initiates written notification and performs any necessary assessment or remediation under a program administered by the Texas Commission on Environmental Quality (TCEQ).

The TCEQ reports that with the enactment of the bill, the burden of proof in NIP suits would be increased for the state and local governments, because of the bill's limitations on timeframes for filing suits, and the bill's limitations on penalty amounts, which are equally split between the state and local governments in such cases, with the state portion deposited to the General Revenue Fund. The TCEQ also reports that in fiscal year 2014, seven NIP cases to which the state and local governments were a party to the case assessed \$131,533 in civil penalties. Upon enactment of the bill, some portion of that revenue stream could be lost. The loss would depend on the number of NIP cases in a given year, whether penalties in such cases would otherwise exceed the limitations proposed by the bill, and timing involved with the NIP case. Based on the information provided by TCEQ, it is assumed that the loss in revenue to the General Revenue Fund would not be significant.

**Local Government Impact**

There may be an impact to local governments resulting from civil penalties, however, as the number of cases and associated penalties awarded are unknown, their fiscal impacts cannot be determined.

**Source Agencies:** 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

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