

CHAPTER 589

S.B. No. 1042

AN ACT

relating to the regulation of on-site sewage disposal systems; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (2), Section 366.002, Health and Safety Code, is amended to read as follows:

(2) "Board" or "commission" means the Texas Natural Resource Conservation Commission.

SECTION 2. Subdivision (4), Section 366.002, Health and Safety Code, is amended to read as follows:

(4) "Designated representative" means a person who is designated by the department or authorized agent to make percolation tests, system designs, and inspections subject to the department's ~~[or authorized agent's]~~ approval.

SECTION 3. Subdivision (8), Section 366.002, Health and Safety Code, is amended to read as follows:

(8) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities ~~[that are not regulated by the Texas Water Commission and]~~ that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on the site where the system is located.

SECTION 4. Section 366.014, Health and Safety Code, is amended to read as follows:

Sec. 366.014. DESIGNATED REPRESENTATIVE. (a) The department or an authorized agent may designate a person to make percolation tests, systems designs, and inspections subject to the approval of the department ~~[or agent]~~.

(b) To qualify as a designated representative, a person must:

(1) demonstrate to the department's ~~[or authorized agent's]~~ satisfaction the person's competency to make percolation tests, designs, and inspections for on-site sewage disposal systems in accordance with this chapter and rules adopted under this chapter; ~~[and]~~

(2) successfully complete the training program provided by the department;

(3) *successfully pass an examination provided by the department;*

- (4) receive written certification from the department; and
- (5) pay a reasonable fee to the department for administration of this training and certification.

SECTION 5. Section 366.071, Health and Safety Code, is amended to read as follows:

Sec. 366.071. REGISTRATION. A person may not operate as an installer in this state unless the person is registered by the department [~~or an authorized agent~~].

SECTION 6. Subsection (a), Section 366.077, Health and Safety Code, is amended to read as follows:

(a) An installer's statewide registration may be revoked by the department [~~or an authorized agent~~] after notice and hearing if the installer violates this chapter or a rule adopted under this chapter.

SECTION 7. Section 366.092, Health and Safety Code, is amended to read as follows:

Sec. 366.092. INJUNCTION OR CIVIL SUIT. (a) *If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter, or any rule, permit, or other order of the commission issued pursuant to this chapter, the commission may request the attorney general to bring a civil suit for:*

- (1) mandatory or prohibitory injunctive relief, as warranted by the facts;
- (2) a civil penalty as provided by this chapter; or
- (3) both injunctive relief and civil penalty.

(b) *Venue for an action under this chapter is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation or threat of violation occurs. [The department or an authorized agent may bring suit for injunction to prevent or restrain a violation of this chapter.]*

SECTION 8. Subchapter F, Chapter 366, Health and Safety Code, is amended by adding Sections 366.0921, 366.0922, 366.0923, and 366.0924 to read as follows:

Sec. 366.0921. CIVIL PENALTY. (a) *An owner who violates any provision of this subchapter or any rule, permit, or order issued pursuant to this chapter is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation and for each day of violation.*

(b) *Any other person who violates any provision of this subchapter or any rule, permit, or order issued pursuant to this chapter is subject to a civil penalty of not less than \$500 nor more than \$5,000 for each act of violation and for each day of violation.*

Sec. 366.0922. COMMISSION DESIGNATED SOLE AUTHORITY TO ENFORCE. *The commission shall be the sole authority designated to initiate an enforcement action under Sections 366.092, 366.0921, and 366.0924. However, a local government may request that the commission initiate an enforcement action pursuant to these sections through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.*

Sec. 366.0923. FEES AND COSTS RECOVERABLE. *If the state prevails in a suit under this subchapter, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.*

Sec. 366.0924. ADMINISTRATIVE PENALTY. (a) *If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section.*

(b) *A person who violates this chapter or a rule, order, or permit issued pursuant to this chapter is subject to a civil penalty as follows:*

- (1) *an owner shall be subject to a civil penalty in an amount not to exceed \$500 per day or act of violation. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty; and*

(2) any other person shall be subject to a civil penalty in an amount not to exceed \$5,000 per day or act of violation. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the circumstances surrounding the prohibited act, with special consideration of the threat to public health and the environment;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report:

(1) stating the facts that support the conclusion; and

(2) recommending that a civil penalty be assessed as described in this section.

(e) The executive director shall send a copy of the report to the person charged no later than the 10th day after the report was issued. That notice shall include a statement that the person has the right to a hearing before the agency.

(f) The person charged may, no later than 20 days after the date on which the notice was received, give written consent to the executive director's report or request a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission shall assess the penalty by order or shall order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision.

(h) The person assessed an administrative penalty shall pay the penalty not later than the 30th day after the date on which the commission order is final or file a petition for judicial review.

(i) The commission may request enforcement by the attorney general if any person fails to comply with an agency order.

(j) Judicial review of any agency administrative order issued under this section shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(k) An administrative penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 7, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 25, 1993, by a viva-voce vote; passed the House, with amendment, on May 21, 1993, by a non-record vote.

Approved June 13, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.