

SUBJECT: Enforcement of violations by TCEQ with information from an individual

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Bonnen, Hancock, Lucio, Driver, Kuempel

0 nays

2 absent — T. King, West

WITNESSES: For — Christina Wisdom, Texas Chemical Council (*Registered, but did not testify*: Lisa Anderson, Shell Oil; Walt Baum, Association of Electric Companies of Texas; Gary Gibbs, American Electric Power; Debbie Hastings, Texas Oil and Gas Association; James Mathis, Dupont; Mike Meroney, Huntsman Corporation; Mary Miksa, Texas Association of Business; Julie W. Moore, Occidental Petroleum Corporation)

Against — Beth O'Brien, Public Citizen (*Registered, but did not testify*: Colin Leyden, Texas League of Conservation Voters; Luke Metzger, Environment Texas)

On — Cyrus Reed, Lone Star Chapter of Sierra Club; John Sadlier, Texas Commission on Environmental Quality

BACKGROUND: The 77th Legislature in 2001 enacted HB 2912, which included recommendations on the Texas Commission for Environmental Quality (TCEQ) provided by the Sunset Commission. The bill provided for enforcement action based on evidence provided by private individuals. TCEQ may initiate an enforcement action on evidence received from a private person if the commission determines that the evidence meets the requirements of the Texas Rules of Evidence.

A private individual submitting information may be called to testify in TCEQ's enforcement proceedings and is subject to all legal sanctions pertaining to the falsification of evidence. If TCEQ relies upon information submitted by the individual to prove a case, all physical data must have been collected in accordance with protocols set by the commission.

DIGEST:

CSHB 3780 would provide for certain restrictions to apply when the TCEQ identified multiple violations based on information submitted by a private individual. The commission would enforce compliance only when these violations required the initiation of formal enforcement proceedings.

The bill also would limit enforcement action by TCEQ for certain violations that did not require the initiation of formal legal proceedings. The commission would not include in enforcement actions:

- new violations that had not been investigated twice by TCEQ within the past five years;
- violations that had been corrected within the commission's time frame; and
- violations the facility had not had necessary time to correct, under a time frame specified by the commission

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS  
SAY:

CSHB 3780 would limit the inclusion of certain self-reported violations in an enforcement action. Facilities that are required to obtain federal operating permits from TCEQ, as directed by Title V of the Federal Clean Air Act, must submit reports to TCEQ every six months on monitoring procedures and deviations from set standards, and these self-reported deviations then are subject to inclusion in enforcement actions initiated by TCEQ. Less egregious violations that do not require immediate enforcement action by TCEQ should not be included in the enforcement action process. As a result of CSHB 3780, TCEQ could focus its enforcement efforts on large-scale violations. Consequently, the bill would increase the fairness and efficiency in TCEQ's current process of mandating compliance with the law.

OPPONENTS  
SAY:

CSHB 3780 would limit the use of information presented by private individuals in the process of mandating environmental compliance. Information presented by private individuals often serves as an important means of ensuring public health and environmental compliance. Under current law, private individuals may submit evidence of violations by facilities to TCEQ, and the commission may mandate a facility's compliance with the law using this information. The required use of the Texas Rules of Evidence and the commission's ability to evaluate the

value and credibility of information allows for fairness and accuracy during enforcement proceedings.