

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 86
By: Smith, Wayne (Armbrister)
Natural Resources
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 2001, legislation based on the recommendations of the Sunset Advisory Commission changed the operations of the Texas Commission on Environmental Quality (then, the Texas Natural Resource Conservation Commission). The Sunset Advisory Commission required the Texas Commission on Environmental Quality (commission) to adopt a uniform standard for evaluating compliance history, specified the components of compliance history, required the commission to consolidate all innovative regulatory programs in one office, changed the eligibility requirements for the use of innovative regulatory programs and regulatory flexibility, and established a new classification system based on compliance history.

The regulatory flexibility program was changed in 2001 to require that a clear environmental benefit be shown when requesting regulatory flexibility. Previously, an entity applying for regulatory flexibility only had to show that the entity would meet an existing standard or goal.

The 2001 legislation also established a new requirement that the commission establish a uniform standard for evaluating compliance history and a new requirement for ranking all regulated entities based on compliance history. Notices of violation were specifically required to be part of compliance history. The ranking system required that entities be ranked as "poor performers," "average performers," or "high performers."

C.S.H.B. 86 provides more flexibility to the commission by eliminating the requirement of a single uniform standard for all entities, eliminating the requirement of the ranking system, and eliminating the requirement that the commission use notices of violation in compliance history. C.S.H.B. 86 also provides guidance for the determining which entities are repeat violators and guidance for placing information on the Internet. C.S.H.B. 86 provides that regulatory flexibility can be used upon showing of an equivalent environmental benefit.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 3 (Section 5.753, Water Code), SECTION 5 (Section 5.754, Water Code), and SECTION 9 (Section 361.084, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.752(1), Water Code, to redefine "applicable legal requirement."

SECTION 2. Amends the heading to Section 5.753, Water Code, to read as follows:

Sec. 5.753. STANDARDS FOR USING COMPLIANCE HISTORY

SECTION 3. Amends Section 5.753, Water Code, by amending subsections (a), (b), and (d) and adding Subsections (f) and (g), as follows:

(a) Requires the Texas Commission on Environmental Quality (commission) by rule to develop standards for using compliance history, rather than a uniform standard for evaluating compliance history.

(b) Modifies the components of compliance history required to be included.

(d) Sets forth the conditions under which the commission may include as a notice of violation deviations or violations provided by the person for purposes of listing compliance history or using compliance history in any escalation of penalties. Sets forth the conditions under which the commission may use notices of violation for purposes of using compliance history in any escalation of penalties. Requires a certain statement to precede notices of violations in the compliance history. Deletes the requirement that the set of components include notice of violations. Makes a nonsubstantive change.

(f) Provides that compliance history available on the Internet website of the United States Environmental Protection Agency is considered to be readily available to the commission.

(g) Provides that, except as otherwise specifically provided, this section does not prohibit the commission from using any components of compliance history the commission considers appropriate for permitting or enforcement purposes.

SECTION 4. Amends the heading to Section 5.754, Water Code, to read as follows:

Sec. 5.754. USE OF COMPLIANCE HISTORY.

SECTION 5. Amends Sections 5.754(c), (e), (g), and (h), Water Code, as follows:

(c) Requires the commission to make certain determinations in using, rather than classifying, a person's compliance history. Requires the commission to establish criteria for classifying a repeat violator for purposes of Subsection (f), giving consideration to the size and complexity of the site at which the violations occurred, and limiting considerations to violations of the same nature in the same environmental media, rather than giving consideration to the number and complexity of the facilities owned or operated by the person.

(e) Requires the commission by rule to provide for the use of compliance history, rather than compliance history classifications, in certain commission decisions.

(g) Requires rules adopted for the use of compliance history to provide for additional oversight of, and review of applications regarding, facilities owned and operated by a person whose compliance performance is unsatisfactory according to commission standards, rather than whose compliance performance is in the lowest classification developed under this section.

(h) Deletes the requirement that the commission prohibit a person with an unsatisfactory compliance history from receiving an announced inspection. Makes a conforming change.

SECTION 6. Amends Section 5.755(b), Water Code, to make a conforming change.

SECTION 7. Amends Section 5.756, Water Code, by adding Subsection (e), to provide that any information or data about a site that is placed on the Internet under this subchapter is subject to a quality assurance and control procedure.

SECTION 8. Amends Sections 5.758(a), (b), and (h), Water Code, as follows:

(a) Authorizes the commission by order to exempt an applicant from a requirement of a statute or a commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is as protective of the environment and public health as the method prescribed by the statute or commission rule that would otherwise apply, rather than more protective of the environment and public health than the method prescribed by the statute or commission rule.

(b) Prohibits the commission from exempting an applicant unless the applicant can present documented evidence that the alternative the applicant proposes is as protective

of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply, rather than evidence of benefits to environmental quality that will result from the project the applicant proposes.

(h) Requires the commission to promote, rather than market, the regulatory flexibility program to businesses in the state.

SECTION 9. Amends Section 361.084(a), Health and Safety Code, to require the commission by rule to establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for using compliance history, rather than evaluating compliance history, developed by the commission.

SECTION 10. Amends Section 361.088(f), Health and Safety Code, to make a conforming change.

SECTION 11. Amends Sections 361.089(a), (e), and (f), Health and Safety Code, to authorize the commission to deny or amend a permit for having a compliance history that is unsatisfactory according to commission standards, rather than in the lowest classification, under Sections 5.753 and 5.754, Water Code. Makes conforming changes.

SECTION 12. Amends Section 382.0215, Health and Safety Code, by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (h), as follows:

(a) Redefines "emissions event" and defines "regulated entity."

(a-1) Creates this subsection from existing text. Provides that maintenance, startup, and shutdown activities are not considered unscheduled if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and the owner or operator of the regulated entity, rather than facility, provides any prior notice that the commission establishes by rule and the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity, rather than simply do not exceed the estimates submitted in the notice.

(b) Requires the commission to require each regulated entity that experiences emissions events to notify the commission in a single report for each emissions event, rather than simply notify the commission, of an emissions event resulting in the emission of a reportable quantity of air contaminants. Makes conforming changes.

(f) Makes conforming changes.

(g) Authorizes the commission to allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership and control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

SECTION 13. Amends Sections 382.0216(a), (b), (c), and (i), Health and Safety Code, as follows:

(a) Defines "regulated entity" and makes conforming changes.

(b) Requires the commission to establish criteria for determining which emissions events are excessive, including the frequency of the regulated entity's emissions events, taking into consideration the regulated entity's size and complexity. Makes a conforming change.

(c) Requires the commission to require the owner or operator of a regulated entity, rather than a facility, to take action to reduce emissions from excessive emissions events. Makes conforming changes.

(i) Makes conforming changes.

SECTION 14. Amends Section 382.0518(c), Health and Safety Code, to make a conforming change.

SECTION 15. Amends Section 382.056(o), Health and Safety Code, to make a conforming change.

SECTION 16. Amends Section 401.110(a), Health and Safety Code, to make a conforming change.

SECTION 17. Amends Section 401.112(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 18. Amends Section 26.028(d), Water Code, to make a conforming change.

SECTION 19. Amends Section 26.0281, Water Code, to make a conforming change.

SECTION 20. Amends Section 26.040(h), Water Code, to make a conforming change.

SECTION 21. Amends Section 27.051(d), Water Code, to make a conforming change.

SECTION 22. Repealer. Sections 5.754(a) and (b) (Classification and Use of Compliance History) and 5.757 (Coordination of Innovative Programs), Water Code.

SECTION 23. Makes application of Sections 382.0215 and 382.0216, Health and Safety Code, as amended by this Act, prospective.

SECTION 24. Effective date: upon passage or September 1, 2005.