

BILL ANALYSIS

C.S.H.B. 36
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Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality (TCEQ) has consolidated all innovative regulatory programs into one office, changing the requirements for innovative regulatory programs and the use of regulatory flexibility, and establishing a new ranking system based on compliance history, modeled on the recommendations of the Sunset Advisory Committee. H.B. 28 allows the use of these innovative programs upon the showing of an equal environmental benefit with economic savings to the regulated entity. This bill also eliminates the requirement for a single uniform standard for all entities regulated by TCEQ and authorizes TCEQ to adopt standards that are uniform for sites that are similar in size and complexity and at which similar activities occur. Finally, this bill provides guidance for TCEQ concerning formulas, length of compliance history considered for ranking purposes, and placing information on the Internet. The bill also eliminates the requirement that all innovative programs be consolidated into one office.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill modifies rulemaking authority to the Texas Commission on Environmental Quality in SECTION 1(a)(Section 5.753 , Water Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 5.753, Water Code, by amending Subsections (a), (b), and (e) and adding Subsection (f), as follows:

(a) Authorizes, rather than requires, the Texas Commission on Environmental Quality (TCEQ), consistent with other law and the requirements necessary to maintain federal program authorization, by rule to develop standards for evaluating site-specific compliance history that are uniform for sites that are similar in size and complexity and at which similar activities occur.

(b) Authorizes, rather than requires, the components of compliance history to include certain items, including to the extent readily available to TCEQ consent decrees and criminal convictions relating to violations of environmental laws of the federal government, including the United States Environmental Protection Agency. Deletes text relating to certain other components of compliance history.

(e) Requires TCEQ by rule to establish a period for site-specific compliance history, except as required by other law or any requirement necessary to maintain federal program authorization.

(f) Requires that nothing in this section prevent TCEQ from considering any relevant compliance information, including notices of violation, in enforcement.

SECTION 2. Amends Sections 5.754(a)-(d), (g), (h), and (i), Water Code, as follows:

(a) Authorizes, rather than requires, TCEQ by rule to establish a set of standards for the classification of a person's compliance history at a particular site.

(b) Provides that the rules adopted under this section must, at a minimum, provide for three classifications

of site-specific compliance history in a manner adequate to distinguish among poor performers, or regulated entities that in TCEQ's judgment perform in an unsatisfactory manner, rather than below average, at a particular site; satisfactory performers, or regulated entities that generally comply with environmental regulations at a particular site; and high performers, or regulated entities that have a compliance record at a particular site that demonstrates a high level of compliance with environmental regulations at that site.

(c) Requires TCEQ, in classifying a person's compliance history at a particular site, to consider the size, complexity, and type of activity at the site, and establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred and limiting consideration to violations of a similar nature. Deletes text requiring TCEQ to consider the number and complexity of facilities owned or operated by the person. Makes conforming and nonsubstantive changes.

(d) Makes conforming changes.

(g) Makes conforming changes.

(h) Makes conforming changes.

(i) Requires TCEQ to consider the compliance history of and other relevant compliance information, including notices of violation, relating to a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under TCEQ's jurisdiction to which this subchapter applies.

SECTION 3. Amends Subsection 5.755, Water Code, by amending Subsection (b) as follows:

(b) Requires the strategically regulatory structure to offer incentives based on a person's compliance performance and any voluntary measures undertaken by the person to improve environmental quality.

SECTION 4. Amends Section 5.756, Water Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Requires TCEQ to collect data on and make available to the public on the Internet certain information, including the number and percentage of all violations committed at a particular site by persons who previously have committed the same or similar violations at that site; the number and percentage of enforcement orders issued by TCEQ that are issued for a particular site to entities that have been the subject of a previous enforcement order for that site.

(e) Provides that any material about a site that is placed on the Internet under this subchapter is subject to a quality assurance and quality control procedure, including an opportunity for the entity that holds the permit for the site to review the information before it is placed on the Internet.

SECTION 5. Amends Sections 5.758 (a), (b), (d), and (h), Water Code, as follows:

(a) Authorizes TCEQ to exempt an applicant from a requirement of a statute or TCEQ rule regarding the abatement or control of pollution if the applicant proposes an alternative solution that is as protective, rather than more protective, of the environment and the public health as the method or standard provided by statute or rule.

(b) Prohibits TCEQ from exempting an applicant under this section unless the applicant can demonstrate to TCEQ that the applicant's proposed project will result in protection of environmental quality that is equal to or greater than the protection afforded by existing standards.

(d) Makes a nonsubstantive change.

(h) Requires TCEQ, in implementing the program of regulatory flexibility authorized by this section, to take

certain actions, including endorsing alternative methods that will clearly benefit the environment. Deletes text requiring TCEQ to take certain specific actions to implement the problem.

SECTION 6. Repealer: Section 5.753(d), Water Code.

Repealer: Section 5.757, Water Code.

SECTION 7. Effective date: upon passage or January 15, 2004

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect January 15, 2004

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 7. Effective date remains the same. Removes language not intended by the author in (b) 1-2.