

BILL ANALYSIS

C.S.H.B. 1063
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Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Last session, legislation based on recommendations of the Sunset Advisory Commission changed the operations of the Texas Commission on Environmental Quality (then, the Texas Natural Resource Conservation Commission). Among those changes were requiring the agency to consolidate all innovative regulatory programs in 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.

The change made last session in regulatory flexibility and in innovative programs involved a new requirement that when using these authorizations, a clear environmental benefit had to be shown. Previously, an entity applying for regulatory flexibility only had to show that the entity would meet the existing standard or goal. CSHB 1063 would allow the use of these programs upon a showing of an equal environmental benefit with economic savings to the regulated entity.

The legislation last session also established a new requirement that the agency establish a uniform standard for ranking all regulated entities for compliance history. It also required that notices of violation be a part of any ranking system and that entities be ranked as “poor performers”, “average performers”, or “high performers”. CSHB 1063 would provide more flexibility to the agency by eliminating the requirement for a single uniform standard for all entities and providing that the agency may establish standards that are uniform for sites that are similar in size and complexity and at which similar activities occur. This would allow the agency to establish standards for entities for which it may be more important to rank compliance and not establish the rankings for smaller entities, saving considerable resources. CSHB 1063 also provides guidance for the agency concerning formulas, length of compliance history considered for ranking purposes, and placing information on the internet.

RULEMAKING AUTHORITY

It is the committee’s opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4 (Section 5.755, Water Code) of this bill.

ANALYSIS

SECTION 1.

Amends Sec. 5.572(5), Water Code, to include in definition of “strategically directed regulatory structure” programs that result in economic savings to regulated entities.

SECTION 2.

Amends Sec. 5.753(a), Water Code, to make the development of compliance history “standards” (instead of “a uniform standard”) permissive and would provide that the standards be uniform for sites that are similar in size and complexity and at which similar activities occur.

Amends Sec. 5.753(b), Water Code, to provide that inclusion of elements in compliance history is up to TCEQ and only require federal information to the extent it is readily available. Moves reference to “consent decrees” from Subdivision (1) to Subdivision (3) since those are a function of federal enforcement.

Amends Sec. 5.753(e), Water Code, to clarify that when the commission sets the time period for

compliance history, it is for “site-specific” compliance history.

SECTION 3.

Amends Sec. 5.754(a), Water Code, to allow instead of require the TCEQ to develop classification standards for specific sites (instead of persons).

Amends Sec. 5.754(b), Water Code, to reflect that the mid-range classification is “satisfactory” instead of “average” and specify that these classifications apply to site-specific compliance history.

Amends Sec. 5.754(c), Water Code, to require the TCEQ to give consideration to size when determining a repeat violator (deleting number of facilities since the classification is by site) and limiting consideration to violations of a similar nature at a particular site.

Amends Sec. 5.754(d), Water Code, to clarify that methods for determining compliance history ranking when inadequate compliance information is available is by site.

Amends Sec. 5.754(g), Water Code, to clarify that additional oversight applies to the sites in the lowest classification.

Amends Sec. 5.754(h), Water Code, to clarify that prohibitions in this section only apply to sites in the lowest classification.

Amends Sec. 5.754(i), Water Code, to require TCEQ to consider other relevant compliance information, as well as the compliance history, in permitting actions.

SECTION 4.

Amends Sec. 5.755 (a), Water Code, to make the development of a strategically directed regulatory structure designed to also provide economic savings to regulated entities when the resulting benefits to the environment are equal to those that would result from compliance with applicable legal requirements.

Amends Sec. 5.755 (b), Water Code, to clarify that the strategically directed regulatory structure is designed to offer benefits based on site-specific compliance history.

SECTION 5.

Amends Sec. 5.756(b), Water Code, to delete a requirement that data be made available on the internet and to clarify that the information is by site.

Adds new Sec. 5.756(e), Water Code, to require a quality assurance and quality control procedure, as well as facility review, before material about a site could be placed on the internet.

SECTION 6.

Amends Sec. 5.758(a), Water Code, to eliminate the requirement that regulatory flexibility orders must be more protective of the environment and change the standard to “as protective of the environment”.

Amends Sec. 5.758(b), Water Code, to provide that an applicant has to demonstrate that the proposed project will result in protection of environmental quality equal to or greater than the protection afforded by existing standards before an exemption could be granted (current requirement is “documented evidence of benefits to environmental quality”)

Amends Sec. 5.758(d), Water Code, to eliminate the word “specific” from the description requirement for the commission’s order.

Amends Sec. 5.758(h), Water Code, to eliminate the requirement that TCEQ market its innovative programs and to eliminate the requirement that TCEQ only provide flexibility when environmental outcomes are clearly enhanced.

SECTION 7.

Repeals Sec. 5.753(d), Water Code, to eliminate requirement that compliance history include notices of violations.

Repeals Sec. 5.757, Water Code, to eliminate the requirement that TCEQ provide a single point of contact to coordinate innovative programs, allowing TCEQ flexibility administration of these programs.

SECTION 8.

Provides an effective date of September 1, 2003.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1.

Removes the section of the bill that expands the definition of an “innovative program” to also include programs that achieve the same result at lower costs;

SECTION 2.

Removes “consent decrees” from what TCEQ may include as a component of compliance history relating to compliance with applicable legal requirements under the jurisdiction of the commission and places them where they would relate to violations of environmental law of other states and the federal government;

Removes the 3-year period requirement for site-specific compliance history TCEQ would be required to establish;

SECTION 3.

Returns the bills language to current law for when TCEQ is classifying a person’s compliance history at a particular site;

Requires the commissions to consider the compliance history of and other relevant compliance information relation to a regulated entity when determining whether to grant the regulated entity’s application for a permit or permit amendment for any activity under the commissions jurisdiction to which the classification and the use of the compliance history applies in place of consideration to the sites size and complexity;

Removes the addition of Subsection (d) to Section 5.755, Water Code, not requiring TCEQ to use a denominator that shall include inspections and reports submitted to the commission that allege potential violations at the site if a formula is used to determine classifications;

SECTION 5.

Returns the bills language to current law for TCEQ to collect and make public whether a violation is of a major, moderate, or minor significance, as determined by commission rule and renumber accordingly;

SECTION 6.

Provides that an applicant has to demonstrate that the proposed project will result in protection of environmental quality equal to or greater than the protection afforded by existing standards before an exemption could be granted from a requirement of a statute or commission rule regarding the control or abatement of pollution in place of presenting documented evidence that is only equal to the protection afforded by existing standard.