

BILL ANALYSIS

C.S.H.B. 1630
By: Hilderbran
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

At the present time, Section 341.031, Health and Safety Code, clearly specifies that public drinking water in Texas must be free from harmful matter and must comply with the drinking water standards established by the Texas Commission on Environmental Quality (TCEQ) or the U.S. Environmental Protection Agency. Furthermore, the statute grants TCEQ the authority to adopt and enforce rules in Texas to implement the federal Safe Drinking Water Act (42 U.S.C. §§ 300f-j).

However, the current law does not give TCEQ, in the adoption of any rule implementing a federal drinking water maximum contaminant level standard for naturally occurring materials, the authority to make exceptions, from implementing the federal standards, for potentially affected small community water systems in Texas with no reasonably available alternate water supply. This gap in the statute leaves small community water systems that are dependent on only one water supply for all their water needs unprotected from federal mandates that have failed to consider their circumstances, thereby failing to carve out exceptions in the federal rules protecting these systems from losing access to their only water source.

This bill establishes criteria for a joint study in consultation with Environmental Protection Agency (EPA), and in conjunction with the Texas Water Development Board (TWDB), the Texas Department of Agriculture (TDA), and TCEQ to establish alternate compliance schedules for a small community water systems that cannot achieve compliance in accordance because they face exceptional physical or financial circumstances. The study also includes costs and benefits analysis for implementation to the state and all community water systems affected, oral ingestion studies to ensure demonstrable public health benefits, and viable alternative for small community water systems. Finally, the bill maintains the granting of alternate compliance schedules is not necessary if all the costs associated with compliance of the federal standards, including those of the State of Texas, the drinking supplier, and the end-point user are paid for entirely by the federal government.

The effect of this bill is to protect the small community water system with no reasonably available water supply from implementing federal drinking water standards adopted by the state, particularly when the standards are not scientifically or legally valid, are not based on a proper cost-benefit analysis and are not necessary from a public health benefit viewpoint.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1(b) (Section 341.0316 Subchapter C, Chapter 341, Health and Safety Code) of this bill.

ANALYSIS

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EFFECTIVE DATE

Upon passage if the bill receives a two-thirds vote, otherwise September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill provided an exemption from the federal drinking water standards for small community water systems without access to a reasonably available alternate water source. However, the committee substitute eliminates the exemption language, and instead focuses on the issuance of realistic and feasible compliance schedules with the standards for the affected small community water systems without an alternate water source or adequate funds to adopt the standards.

The substitute articulates the factors that must be taken into consideration by TCEQ when the agency is issuing alternate schedules for small community water systems that are unable to achieve compliance because they face exceptional physical or financial circumstances, including the size, density, and median income of the populations served by the exempted system; the existence of, and costs associated with, properly licensed facilities for treatment, storage or disposal of waste materials that are generated by water treatment systems capable of removing the naturally occurring materials; and the absence of any reasonably available alternate water supply available to the affected system.

Furthermore, the language in section (d) has been added to mandate that the TCEQ, in conjunction with the Texas Water Development Board, the Texas Department of Agriculture, and state agencies with expertise in the protection of public health shall conduct studies on the following: the cost-benefit to the state in implementing the federal drinking water standards; whether the federal standards reflect the best available, peer-reviewed science and proper oral ingestion studies; an accurate cost assessment of implementation of the standards to the state and all community water systems within the state affected by the standards; and whether point-of-use removal technology provides an economically reasonable and viable water treatment alternative for these affected small community water systems. As indicated in section (g), the studies required are to be completed by November 1, 2004, and a report to the Legislature on the findings is to be provided by January 1, 2005.

Finally, the substitute language in section (f) further clarifies that the issuance of alternate compliance schedules does not apply to small community water systems which have entered into prior agreements, or which are under obligation, to completely abandon use of groundwater by conversion to surface water for drinking water supply.