BILL ANALYSIS

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."

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. H.B. 86 also provides guidance for the determining which entities are repeat violators and guidance for placing information on the Internet. 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 Sections 5.753(a), (b), and (d), Water Code, 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.

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, 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 382.0518(c), Health and Safety Code, to make a conforming change.

SECTION 13. Amends Section 382.056(o), Health and Safety Code, to make a conforming change.

SECTION 14. Amends Section 401.110(a), Health and Safety Code, to make a conforming change.

SECTION 15. Amends Section 401.112(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 16. Amends Section 26.028(d), Water Code, to make a conforming change.

SECTION 17. Amends Section 26.0281, Water Code, to make a conforming change.

SECTION 18. Amends Section 26.040(h), Water Code, to make a conforming change.

SECTION 19. Amends Section 27.051(d), Water Code, to make a conforming change.

SECTION 20. Repealer. Sections 5.754(a) and (b) (Classification and Use of Compliance History) and 5.757 (Coordination of Innovative Programs), Water Code.

SECTION 21. Effective date: September 1, 2005.