

BILL ANALYSIS

H.B. 86
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Environmental Regulation
Committee Report (Amended)

BACKGROUND AND PURPOSE

In 2001, 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 adopt a uniform standard for evaluating compliance history and specifying the components of compliance history, requiring the agency to consolidate all innovative regulatory programs in one office, changing the eligibility requirements for the use of innovative regulatory programs and regulatory flexibility, and establishing a new classification system based on compliance history.

The regulatory flexibility program was changed in to 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 they would meet the existing standard or goal. H.B. 86 would provide that regulatory flexibility could be used upon a showing of an equivalent environmental benefit.

The legislation in 2001 also established a new requirement that the TCEQ 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 a part of compliance history. The ranking system provided that entities be ranked as "poor performers", "average performers", or "high performers".

H.B. 86 would provide more flexibility to the agency by eliminating the requirement for a single uniform standard for all entities and eliminating the requirement for a ranking system. It would eliminate the requirement that the TCEQ use notices of violation in compliance history. H.B.86 also provides guidance for the agency concerning the definition of "repeat violator" 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 SECTIONS 3, 5, 8, 9, 11, 13, and 18 of this bill.

ANALYSIS

The bill amends the Water Code to repeal provisions that require the Texas Commission on Environmental Quality (TCEQ) establish a set of standards for the classification of a person's compliance history. The bill requires the TCEQ, by rule, to develop "standards" rather than a "uniform standard" for using compliance history. The bill repeals provisions that require the TCEQ to provide for three specified classes of compliance history. The bill removes the following from the required components of compliance history: consent decrees and federal criminal convictions relating to compliance with U.S. Environmental Protection Agency (EPA) requirements. Instead, the bill requires the TCEQ, to the extent readily available, to include consent decrees and criminal convictions relating to EPA rules in compliance histories. The bill repeals provisions that require compliance histories include notices of violations. The bill repeals provisions that require the TCEQ to designate a single point of contact within the agency to coordinate all innovative programs. The bill makes conforming changes to reflect the repeal of compliance history evaluations and classifications. The bill amends the TCEQ's rulemaking authority to reflect the repeal of compliance history evaluations and classifications.

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Current statute requires the criteria for determining a repeat violator in compliance histories to give consideration to the number and complexity of facilities owned or operated by the person. This bill amends that criteria to consider the size and complexity of the site at which violations occurred and limits consideration to violations of the same nature in the same environmental media.

The bill removes the requirement that compliance history be a consideration in the use of announced inspections. The bill removes the prohibition on receiving announced inspections for those with an unsatisfactory compliance history.

The bill provides that any information about a site that is placed on the internet as provided by regulatory flexibility statutes is subject to a quality control and review procedure.

The bill eliminates the requirement that regulatory flexibility orders must be more protective of the environment and public health and changes the standard to "as protective of" the environment and public health. Additionally, the bill requires an applicant for regulatory flexibility to present evidence that the proposed alternative is as protective of the environment and public health, rather than presenting evidence of benefits to environmental quality. The bill removes the requirement that this evidence be documented evidence. The bill removes the requirement that a regulatory flexibility order include a "specific description" of alternative methods and requires only a description of those methods.

The bill amends the Health and Safety Code to make conforming changes relating to the elimination of compliance history classifications and evaluations.

EFFECTIVE DATE

The Act takes effect September 1, 2005.

EXPLANATION OF AMENDMENTS

Committee Amendment 1

The amendment restores provisions repealed by the Bill that required a compliance history to include notices of violations.

The amendment removes from statute the requirement that notices of violation must be a part of compliance history. The amendment provides that notices of violations administratively determined to be without merit may not, rather than shall not, be included in a compliance history. The amendment prohibits the TCEQ from including self-reported violations or deviations as a violation for the purposes of listing or using compliance history, unless the TCEQ issues a written notice of violation. The amendment prohibits the TCEQ from using notices of violations for purposes of using compliance history in an escalation of penalties, unless the TCEQ takes subsequent action or the person is a repeat offender. The amendment requires the TCEQ to include a statement preceding notices of violation in compliance histories. The statement reads, "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred."