

BILL ANALYSIS

Senate Research Center
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S.B. 484
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Natural Resources
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Commission on Environmental Quality (TCEQ) may not impose a fee on emissions in excess of 4,000 tons per year from any one source.

TCEQ assesses an annual emissions fee based on per ton emissions from facilities in Texas which emit certain "criteria" air pollutants such as carbon monoxide, nitrogen oxide, and sulfur dioxide (i.e., those facilities subject to permitting under Titles IV or V of the federal Clean Air Act Amendments of 1990). Currently, these facilities must pay a fee for emissions up to 4,000 tons per year. The facilities do not pay a fee for any emissions in excess of the 4,000 tons per year cap.

TCEQ is directed by statute to use the emission fees collected to develop and administer its Title V Air Operating Permit Program. Those fees must be "at least sufficient to cover all reasonably necessary direct and indirect costs" of the following: reviewing and acting on any application for at Title IV or V permit; implementing and enforcing the terms and conditions of a Title IV or V permit, excluding court costs or other costs associated with any enforcement action; emissions and ambient monitoring; preparing generally applicable regulations or guidance; modeling, analyses, and demonstrations; and preparing inventories and tracking emissions.

TCEQ has recently seen a reduction in the revenues from these emissions fees. This may be due to the improvements made in order to bring certain areas into non-attainment status under the federal Clean Air Act.

Polluters currently pay nothing for emissions released in excess of the 4,000 tons per year cap, whether they emit 4,001 tons or over 100,000 tons. In effect, this system gives polluters a volume discount. The more the polluters emit, the less they have to pay per ton. Thus, facilities have little to no incentive to make capital improvements or implement other measures to reduce emissions.

As proposed, S.B. 484 increases the amount of excess emissions on which TCEQ can impose a fee from 4,000 tons per year to 8,000 tons per year from any one source. The induction of an 8,000 tons per year fee cap would bring necessary revenue to TCEQ to allow it to carry out its directives. By raising the fee cap, this bill would also serve to encourage more facilities to realize emissions reductions in order to avoid higher fee charges.

Additionally, S.B. 484 directs TCEQ to reexamine the fee per ton charge in light of additional revenue received due to passage of this bill. If TCEQ receives sufficient funds to operate its permit program, it may reduce the amount of the operating permit fee. Therefore, if this bill is passed, many facilities may actually see a decrease in fee payments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 382.0621(d), Health and Safety Code, to prohibit the Texas Commission on Environmental Quality (commission), except as provided by this section, from imposing a fee for any amount of emissions of an air contaminant regulated under the federal

Clean Air Act Amendments of 1990 in excess of 8,000, rather than 4,000, tons per year from any source. Deletes the requirement that the commission impose certain fees on or after September 1, 2001, for certain facilities.

SECTION 2. Requires the commission to examine the desirability of reducing by rule the amount of the operating permit fee authorized by Section 382.0621 (authorizing an annual fee for based on emissions), Health and Safety Code, provided that the requirements of Section 382.0621(b) (requiring fees to be sufficient to cover costs of developing and administering the permit program), can still be met, because of the additional revenue that should be generated by the change in law made by this Act to Section 382.0621(d), Health and Safety Code.

SECTION 3. Effective date: September 1, 2005.