

## **BILL ANALYSIS**

Senate Research Center  
79R940 JTS-D

S.B. 519  
By: Armbrister  
Natural Resources  
3/4/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

As proposed, S.B. 519 repeals Water Code provisions that require the Texas Commission on Environment Quality (TCEQ) to establish a set of standards for the classification of a person's compliance history. The bill requires TCEQ, by rule, to develop standards, rather than a uniform standard, for using compliance history. It also repeals provisions that require TCEQ to provide for three specified classes of compliance history and removes consent decrees and federal criminal convictions relating to United States Environmental Protection Agency requirements as required components of compliance history.

S.B. 519 also repeals provisions that require compliance histories to include notices of violations and provisions that require TCEQ to designate a single point of contact within the agency to coordinate all innovative programs.

S.B. 519 removes the requirement that compliance history be a consideration in the use of announced inspections and lifts the prohibition on receiving announced inspections for those with an unsatisfactory compliance history. S.B. 519 also 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.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Commission on Environmental Quality is modified in SECTION 3 (Section 5.753, Water Code) and SECTION 5 (Section 5.754, Water 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) and (b), Water Code, as follows:

(a) Requires the Commission on Environmental Quality (commission) by rule to develop standards, rather than a uniform standard, for using, instead of evaluating, compliance history consistent with other law and the requirements necessary to maintain federal program authorization.

(b) Sets forth and amends the components of compliance history that must be included in the standards.

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, in using, rather than classifying, a person's compliance history, to take certain measures for the purpose of establishing standards for classifying violations. 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 consideration to violations of the same nature in the same environmental media. Deletes language requiring the criteria to give consideration to the number of facilities owned or operated by the person being classified.

(e) Deletes text regarding the use of announced inspections as a practice to which the commission's use of compliance history in commission decisions applies. Makes a conforming change.

(g) Requires rules adopted under Subsection (e) for the use of compliance history to provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is unsatisfactory according to commission standards, rather than in the lowest classification developed under this section. Makes a conforming change.

(h) Makes conforming changes.

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 quality control procedure, including an opportunity for the owner and operator of the site to review the information before it is placed on the Internet.

SECTION 8. Amends Sections 5.758(a), (b), (d), and (h), Water Code, as follows:

(a) Authorizes the commission by order to exempt an applicant from a requirement of a statute or 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 to an alternative standard that is as, rather than more, protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply.

(b) Prohibits the commission from exempting an applicant under this section unless the applicant can present to the commission 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. Deletes text requiring the applicant to present documented evidence of the benefits to environmental quality that will result from the project the applicant proposes in order to receive an exemption.

(d) Makes a nonsubstantive change.

(h) Makes a nonsubstantive change.

SECTION 9. Amends Section 361.084(a), Health and Safety Code, to make a conforming change.

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 make 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 a conforming and a nonsubstantive change.

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. Repealers: Sections 5.753(d) (relating to the components inclusion of notices of violations), 5.754(a) and (b) (relating to the commission establishing a set of standards for determining a person's classification history), and 5.757 (Coordination of Innovative Programs), Water Code.

SECTION 21. Effective date: September 1, 2005.