

By: Frost

H.B. No. 2742

A BILL TO BE ENTITLED

AN ACT

1
2 relating to sanitary, chemical, or bacteriological surveys of
3 bodies of public water conducted by the Department of State Health
4 Services and related fish advisories.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter G, Chapter 436, Health and Safety
7 Code, is amended by adding Sections 436.092 through 436.098 to read
8 as follows:

9 Sec. 436.092. DUTIES OF DIRECTOR. Before conducting a
10 sanitary, chemical, or bacteriological survey of a body of public
11 water, the director shall:

12 (1) prepare a proposed quality assurance project plan
13 that complies with Section 436.094 and is designed specifically for
14 the body of public water subject to the survey;

15 (2) publish notice of the proposed survey at least
16 once in a newspaper regularly published or circulated in each
17 county in which the body of public water is located and provide
18 individual notice as required by Section 436.093; and

19 (3) provide a public review and comment period in
20 accordance with Section 436.095.

21 Sec. 436.093. NOTICE TO STAKEHOLDERS. (a) The director
22 shall identify persons with a direct interest in a body of public
23 water that is the subject of a proposed sanitary, chemical, or
24 bacteriological survey, including:

1 (1) the executive director of the Texas Commission on
2 Environmental Quality;

3 (2) the executive director of the Texas Parks and
4 Wildlife Department;

5 (3) a representative of each water district or river
6 authority with jurisdiction over the body of public water subject
7 to the proposed survey;

8 (4) a representative of the segment of the Texas Clean
9 Rivers Program administered by the Texas Commission on
10 Environmental Quality that performs functions in relation to the
11 body of public water;

12 (5) a representative of each municipality:

13 (A) any portion of which is located within five
14 miles of the body of public water;

15 (B) that maintains municipal facilities on or at
16 the body of public water; or

17 (C) for which the body of public water is a source
18 of drinking water or a discharge point for effluent;

19 (6) a representative of each industrial or commercial
20 entity that uses the body of public water or is otherwise dependent
21 on the body of public water in the entity's business; and

22 (7) a representative of any nongovernmental entity,
23 such as a citizen or public interest group, that has as its primary
24 purpose the preservation and protection of the body of public
25 water.

26 (b) Not later than the 60th day before the proposed survey
27 is scheduled to begin, the director shall mail notice of the

1 proposed survey to each person listed or identified under
2 Subsection (a). The notice must state:

3 (1) the reason for the proposed survey;

4 (2) the director's statutory and regulatory authority
5 to conduct the proposed survey;

6 (3) the name, address, and phone number of a contact
7 person at the department who is knowledgeable concerning the
8 proposed survey and responsible for addressing questions from
9 interested persons and other members of the public;

10 (4) the contaminants to be sampled in the proposed
11 survey;

12 (5) a description of the opportunity for interested
13 persons and other members of the public to learn more about the
14 proposed survey; and

15 (6) a description of the review and comment process
16 for the proposed survey and the proposed quality assurance project
17 plan.

18 Sec. 436.094. QUALITY ASSURANCE PROJECT PLAN. The quality
19 assurance project plan for a sanitary, chemical, or bacteriological
20 survey of a body of public water must include:

21 (1) a general description of the survey;

22 (2) a statement of the objective of the survey;

23 (3) a description of the sampling and analytical
24 methods and quality assurance procedures;

25 (4) a description of the methodology to be employed to
26 interpret survey data;

27 (5) a description of the roles and responsibilities of

1 the survey participants;

2 (6) a statement of the schedule for conducting the
3 survey and obtaining survey results and the information anticipated
4 to be obtained by the survey; and

5 (7) a map showing proposed sampling locations.

6 Sec. 436.095. REVIEW AND COMMENT PERIOD. (a) The director
7 shall provide a review and comment period of at least 30 days during
8 which interested persons and other members of the public may
9 comment on the proposed sanitary, chemical, or bacteriological
10 survey of a body of public water and the proposed quality assurance
11 project plan.

12 (b) Before conducting the proposed sanitary, chemical, or
13 bacteriological survey, the director must consider each comment
14 received during the review and comment period and provide a written
15 response to the comments.

16 (c) The director's response to comments must either accept
17 or reject each comment and state the reason the comment was
18 accepted or rejected.

19 Sec. 436.096. NOTICE TO PUBLIC OF RESPONSE TO COMMENTS AND
20 QUALITY ASSURANCE PLAN. (a) After the close of the review and
21 comment period and before a proposed sanitary, chemical, or
22 bacteriological survey of a body of public water is conducted, the
23 department shall make available to the public the director's
24 written response to comments and a final quality assurance project
25 plan.

26 (b) The director shall mail notice of the response to
27 comments and final quality assurance project plan to each person

1 listed by or identified under Section 436.093(a) and to each person
2 who submitted a comment during the review and comment period.

3 Sec. 436.097. NOTICE ON COMPLETION OF SURVEY. (a) On
4 completion of a sanitary, chemical, or bacteriological survey of a
5 body of public water, the director shall notify the public of the
6 survey results and of any declaration of a prohibited area or fish
7 advisory the director considers necessary based on the survey
8 results.

9 (b) Notice under this section must be published at least
10 once in a newspaper regularly published or circulated in each
11 county in which the body of public water is located. The director
12 shall mail the notice to each person listed by or identified under
13 Section 436.093(a) and to each person who submitted a comment
14 during the review and comment period.

15 Sec. 436.098. FISH ADVISORIES. (a) The executive
16 commissioner of the Health and Human Services Commission shall
17 adopt rules in accordance with this section to establish standards
18 for the form and content of health advisories concerning
19 consumption of fish to ensure that the advisories communicate the
20 appropriate level of risk associated with fish consumption.

21 (b) If survey data obtained from a body of public water
22 suggest a distinction is appropriate, a fish advisory must
23 distinguish:

- 24 (1) risks related to particular fish species;
25 (2) risks related to fish of a particular size; and
26 (3) risks to sensitive or at-risk populations, such as
27 children or nursing or pregnant women.

1 (c) Rules adopted under this section must address other
2 areas of potential public concern that may arise from the issuance
3 of a fish advisory, including swimming, boating, catch-and-release
4 fishing, and other recreational activities.

5 (d) If a fish advisory is issued, the department shall
6 provide ongoing assistance to the public and interested persons in
7 the effective communication of the advisory through preparation of
8 circulars, maintaining posted signs, and providing a department
9 contact for questions that arise regarding the advisory.

10 (e) Rules adopted under this section must require that the
11 department review each fish advisory at least once during each
12 four-year period. At a minimum, the review must:

13 (1) address the adequacy of the survey on which the
14 advisory is based considering developments in applicable science or
15 documented changes in underlying conditions of the body of public
16 water; and

17 (2) consider credible information provided by
18 interested persons and other members of the public.

19 (f) The department may accept gifts and grants to fund
20 surveys related to fish advisories. Rules adopted under this
21 section must include provisions to ensure that:

22 (1) appropriate information concerning the conduct of
23 surveys supported by the gifts and grants is available to
24 interested persons and other members of the public; and

25 (2) the surveys supported by gifts and grants produce
26 reliable data.

27 SECTION 2. The executive commissioner of the Health and

1 Human Services Commission shall adopt rules as necessary to
2 implement this Act not later than January 1, 2008.

3 SECTION 3. This Act applies only to a sanitary, chemical, or
4 bacteriological survey of a body of public water conducted on or
5 after January 1, 2008.

6 SECTION 4. This Act applies only to a fish advisory issued
7 or in effect on or after January 1, 2008.

8 SECTION 5. This Act takes effect September 1, 2007.