

Amend CSSB 16 by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2001.0225, Government Code, is amended to read as follows:

Sec. 2001.0225. REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES. (a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to:

(1) exceed an express requirement of [~~a standard set by~~] federal law, unless the rule is specifically required by state law;

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law; or

(3) [~~exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or~~

~~(4)]~~ adopt a rule solely under the general powers of the agency instead of under a specific state law.

(b) Before adopting a major environmental rule subject to this section, a state agency shall conduct a regulatory analysis. A regulatory analysis of a major environmental rule conducted under this section must provide the public with transparency regarding the cost-effectiveness of the rule, including the economic costs and the economic benefits weighed by the agency in adopting the rule. The regulatory analysis does not preclude the agency from adopting the rule [~~that:~~

~~(1) identifies the problem the rule is intended to address;~~

~~(2) determines whether a new rule is necessary to address the problem; and~~

~~(3) considers the benefits and costs of the proposed rule in relationship to state agencies, local governments, the public, the regulated community, and the environment].~~

(c) When giving notice of a major environmental rule subject to this section, a state agency shall incorporate into the fiscal note required by Section 2001.024 a draft impact analysis describing the anticipated effects of the proposed rule. The draft

impact analysis, at a minimum, must:

(1) identify the problem the rule is intended to address and the benefits that the agency anticipates from adoption and implementation of the rule, including reduced risks to human health, safety, or the environment;

(2) identify and describe in a quantitative and qualitative manner the costs that the agency anticipates state agencies, local governments, the public, and the regulated community, including regulated small businesses, will experience after implementation of the rule; and

(3) identify and [~~describe the benefits and costs anticipated from implementation of the rule in as quantitative a manner as feasible, but including a qualitative description when a quantitative description is not feasible or adequately descriptive;~~

[~~(4)~~] describe reasonable alternative methods of compliance, including performance-based and market-based approaches [~~for achieving the purpose of the rule that were considered by the agency and provide the reasons for rejecting those alternatives in favor of the proposed rule;~~

[~~(5)~~] ~~identify the data and methodology used in performing the analysis required by this section;~~

[~~(6)~~] ~~provide an explanation of whether the proposed rule specifies a single method of compliance, and, if so, explain why the agency determines that a specified method of compliance is preferable to adopting a flexible regulatory approach, such as a performance oriented, voluntary, or market based approach;~~

[~~(7)~~] ~~state that there is an opportunity for public comment on the draft impact analysis under Section 2001.029 and that all comments will be addressed in the publication of the final regulatory analysis; and~~

[~~(8)~~] ~~provide information in such a manner that a reasonable person reading the analysis would be able to identify the impacts of the proposed rule].~~

(d) After considering public comments submitted under Section 2001.029 and determining that a proposed rule should be adopted, the agency shall prepare a final regulatory analysis under

this section that complies with Section 2001.033. [~~Additionally, the agency shall find that, compared to the alternative proposals considered and rejected, the rule will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of any alternative regulatory method considered.~~]

(e) [~~In preparing the draft impact analysis before publication for comment and the final regulatory analysis for the agency order adopting the rule, the state agency shall consider that the purpose of this requirement is to identify for the public and the regulated community the information that was considered by the agency, the information that the agency determined to be relevant and reliable, and the assumptions and facts on which the agency made its regulatory decision.~~] In making its final regulatory decision, the agency shall assess and consider:

(1) all information submitted to it, whether quantitative or qualitative, consistent with generally accepted scientific standards;

(2) actual data where possible; and

(3) assumptions that reflect actual impacts that the regulation is likely to impose.

(f) A person who submitted public comment in accordance with Section 2001.029 may challenge the validity of a major environmental rule that is not proposed and adopted strictly in accordance with the procedural requirements of this section by filing an action for declaratory judgment under Section 2001.038 not later than the 30th day after the effective date of the rule. If a court determines that a major environmental rule was not proposed and adopted strictly in accordance with the procedural requirements of this section, the rule is invalid.

(g) In this section:

(1) "Benefit" means a reasonably identifiable, significant, direct or indirect, favorable effect, including a quantifiable or nonquantifiable environmental, health, or economic effect, that is expected to result from implementation of a rule.

(2) "Cost" means a reasonably identifiable, significant, direct or indirect, adverse effect, including a

quantifiable or nonquantifiable environmental, health, or economic effect, that is expected to result from implementation of a rule.

(3) "Major environmental rule" means a rule the specific intent of which is to:

(A) protect the environment or reduce risks to human health from environmental exposure and that may adversely affect [in a material way] the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state;

(B) control or monitor emissions of:

(i) criteria pollutants that are subject to a federal air quality standard under 40 C.F.R. Part 50, including sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead;

(ii) precursors of ozone, which include oxides of nitrogen and volatile organic compounds; and

(iii) greenhouse gases, which include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride; or

(C) change an existing agency rule or policy in a way that adds a new, substantive, or procedural requirement:

(i) that must be met by a regulated entity;
and

(ii) a violation of which by a regulated entity would subject the entity to administrative, civil, or criminal penalties.

(h) The requirements of this section do not apply to state agency rules that are proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

SECTION _____. Section 2001.035(a), Government Code, is amended to read as follows:

(a) A rule is voidable unless a state agency adopts it:

(1) in substantial compliance with Sections 2001.023 [2001.0225] through 2001.034; or

(2) in strict compliance with Section 2001.0225, if applicable.