

## **BILL ANALYSIS**

Senate Research Center  
81R1733 JAM-D

S.B. 171  
By: Gallegos  
Natural Resources  
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As Filed

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

Currently, the Texas Commission of Environmental Quality (TCEQ) uses effects screening levels (ESL) as health based guidelines for measuring air pollution. These ESLs are helpful guidelines used by TCEQ when setting air permits and monitoring air quality. However, the process for setting ESLs is not in the statute and the ESLs themselves are not enforceable standards.

This bill requires TCEQ by rule to adopt ESLs for air contaminants and provides a penalty for violations.

As proposed, S.B. 171 amends current law relating to standards for measuring the emission of air contaminants under the Texas Clean Air Act and provides a penalty.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Sections 382.042 and 382.043, Health and Safety Code) and SECTION 2 (Section 382.085, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Natural Resource Conservation Commission is modified in SECTION 2 (Section 382.085, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 382, Health and Safety Code, by adding Sections 382.042 and 382.043, as follows:

Sec. 382.042. EFFECTS SCREENING LEVELS. (a) Requires the Texas Natural Resource Conservation Commission (TNRCC) by rule to adopt effects screening levels for air contaminants. Sets forth certain requirements for each effects screening level.

(b) Requires TNRCC to assemble a panel, not later than January 1, 2010, of independent, nationally recognized experts in the fields of toxicology, epidemiology, medicine, and public health to review TNRCC's effects screening levels and to recommend standards that comply with the requirements of Subsection (a). Requires the panel, as part of the review, to consider the effects screening levels, methods, and programs of other states and to provide opportunities for public comment. Requires the panel to make recommendations to TNRCC not later than July 1, 2011. Requires TNRCC to adopt effects screening levels as required under Subsection (a) that take into consideration the panel's recommendation, not later than October 1, 2011. Requires the owner or operator (operator) of an emission source to comply with the effects screening levels set by TNRCC under this section not later than January 1, 2013. Provides this subsection expires September 1, 2013.

(c) Provides that until TNRCC adopts effects screening levels to comply with the requirements of Subsection (a), the levels adopted by TNRCC as of September 1, 2009, are interim standards for purposes of Sections 382.043 and 382.085. Provides that this subsection expires November 1, 2011.

Sec. 382.043. SANCTIONS; REPORT. (a) Prohibits a person from causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity that causes an effects screening level set by TNRCC to be exceeded. Requires TNRCC by rule to establish requirements for assessing a penalty or initiating an action for an injunction against a person who violates this section.

(b) Requires TNRCC to annually publish a report that lists each violation of this section and include any instance in which TNRCC suspected a violation but later determined there was insufficient evidence or credibility to prove a violation of this section.

SECTION 2. Amends Section 382.085, Health and Safety Code, by amending Subsection (a) and adding Subsections (c)-(e), as follows:

(a) Prohibits a person from contributing to, either in isolation or in conjunction with air contaminants from other sources, a condition of air pollution. Deletes an exception as authorized by a TNRCC rule or order.

(c) Sets forth certain determinants of air pollution for purposes of this section.

(d) Requires TNRCC by rule to establish requirements for assessing a penalty or initiating an action for an injunction against a person who violates this section in addition to any other remedy authorized by law.

(e) Provides that if TNRCC brings an action for a violation of this section, the burden is on the operator of the facility or source (facility) to demonstrate to TNRCC, through certification by a responsible official designated by the operator, that the facility is in compliance with applicable technological and monitoring requirements and that the operator is unaware of any evidence that the facility has caused or contributed to a condition of air pollution in violation of this section.

SECTION 3. (a) Requires TNRCC, not later than January 1, 2010, to adopt requirements for assessing a penalty or initiating an action for an injunction against a person who violates Section 382.043, Health and Safety Code, or Section 382.085, Health and Safety Code, as added by this Act.

(b) Requires TNRCC, not later than March 1, 2010, to publish the first annual report listing violations of effects screening levels as required by Section 382.043, Health and Safety Code, as added or amended by this Act.

(c) Makes application of Section 382.085, Health and Safety Code, as amended by this act, prospective.

(d) Makes application of Section 382.043, Health and Safety Code, as added by this act, prospective.

SECTION 4. Effective date: September 1, 2009.