

BILL ANALYSIS

C.S.S.B. 1693
By: Ogden
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Livestock and poultry wastes from animal feeding operations are regulated to prevent dumping and when applied on land controlled by the operators of the animal feeding operations. When these by-products are exported from the animal operations to private lands, they are treated as fertilizer and regulations for hauling and application are limited.

C.S.S.B. 1693 amends current law to address issues related to poultry facility odors, response to complaints, air contaminant prevention measures and the record of sale, purchase, transfer or application of poultry. C.S.S.B. 1693 adds a course of action for responding to poultry odor complaints, as well as improving upon record retention for the sale, purchase or transfer of poultry litter.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the State Soil and Water Conservation Board, in consultation with the Texas Commission on Environmental Quality, in SECTION 2 of this bill.

ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) Defines "poultry facility" and "poultry litter."

(b) Requires the Texas Commission on Environmental Quality (commission) to respond and investigate not later than eighteen hours after receiving: a second complaint against a poultry facility concerning odor associated with the facility or the application of poultry litter to land by the facility; or a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) Requires the commission to issue a notice of violation if, after the investigation, the commission determines a poultry facility is violating the terms of its air quality authorization or is creating a nuisance.

(d) Requires the commission by rule or order to require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. Requires that the compliance agreement include an odor control plan that the executive director of the commission determines is sufficient to control odors.

(e) Requires the owner or operator of a new poultry facility to complete a poultry facility training course on the prevention of odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. Requires the owner or operator of a poultry facility to

maintain records of the training and make the records available to the commission for inspection.

(f) Authorizes the poultry science unit of the Texas AgriLife Extension Service to charge an owner or operator of a poultry facility subject to Section 382.068 a training fee to offset the direct cost of providing the training.

SECTION 2. Amends Section 26.302, Water Code, by adding Subsections (b-2) and (b-3).

(b-2) Requires the State Soil and Water Conservation Board (board), in consultation with the Texas Commission on Environmental Quality (commission), by rule to establish criteria to determine the geographic, seasonal and agronomic factors the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry facilities.

(b-3) Prohibits the board from certifying a water quality management plan for a poultry facility located less than one-half mile from a business, off-site permanently inhabited residence or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides a suitable odor control plan the executive director of the commission determines is sufficient to control odors. Provides that this subsection does not apply to a revision of a previously certified and existing water quality management plan unless the revision is necessary because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility; or to any poultry facility located more than one-half mile from a surrounding business, off-site permanently inhabited residence or place of worship established before the poultry facility was constructed.

SECTION 3. Amends Subchapter H, Chapter 26, Water Code, by adding Sections 26.304 and 26.305.

Section 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR APPLICATION OF POULTRY LITTER. (a) Requires a poultry facility that sells or transfers poultry litter for off-site application to maintain, until the second anniversary of the date of sale or transfer, a record regarding certain information.

(b) Requires a person that purchases or obtains poultry litter for land application to maintain, until the second anniversary of the date of application, a signed and dated proof of delivery document for every load of poultry litter applied to land. Requires the landowner or the owner's tenant or agent to note on the document each date on which the poultry litter was applied to land.

(c) Provides that Subsection (b) does not apply to poultry litter that is taken to a composting facility; used as a bio-fuel or in a bio-gasification process; or otherwise beneficially used without being applied to land.

Section 26.305. INSPECTION OF RECORDS. Authorizes the commission to inspect any record required to be maintained under Subchapter H.

SECTION 4. Prospective clause.

SECTION 5. Effective date.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 1693 is a Texas Legislative Council draft.

SECTION 1. C.S.S.B. 1693 differs from the original by clarifying the complaints under Section 382.068 concern odor nuisance rather than nuisance odor. The substitute differs from the original by requiring the commission by rule or order to require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The original required the commission to enter into a comprehensive compliance agreement with the facility. The substitute differs from the original by combining all compliance agreement language into one subsection from three subsections in the original; by combining all training and record keeping language into one subsection from two subsections in the original; and by renaming the subsections accordingly.

SECTION 2. C.S.S.B. 1693 differs from the original by amending Section 26.302, Water Code, by adding Subsections (b-2) and (b-3) created from language in the original that added Subsections (c), (d) and (e). The substitute differs from the original by adding "off-site" to clarify the description of permanent residence facilities. The substitute differs from the original by providing that Subsection (b-3) applies to the revision of a previously certified and existing water quality management plan that is necessary because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility. The original did not contain this provision.

SECTION 3. C.S.S.B. 1693 differs from the original in Subsection 26.304(a)(2) by adding "identified by the purchaser or transferee" to the description of the physical destination of the poultry litter. The original did not contain this additional descriptive language. The substitute differs from the original by adding Subsection 26.304(c) to provide that Subsection (b) does not apply to poultry litter that is taken to a composting facility; used as a bio-fuel or in a bio-gasification process; or otherwise beneficially used without being applied to land. The original contained no similar provision.

SECTION 4. C.S.S.B. 1693 differs from the original by adding Section 4 of the bill to make application of this Act prospective. The original contained no similar provision.

SECTION 5. There is no change in the effective date from the original.