

By: Hernandez

H.B. No. 769

A BILL TO BE ENTITLED

AN ACT

relating to standards for measuring the emission of air contaminants under the Texas Clean Air Act; providing a penalty.

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

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

Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The commission by rule shall adopt effects screening levels for air contaminants. Each effects screening level must:

(1) be set in a manner that takes into consideration all acute and chronic health effects on a person resulting from exposure to an air contaminant;

(2) be based in part on the health effects of:

(A) the one-hour, eight-hour, or 24-hour exposure of a person to the highest concentration of the air contaminant from an emission source; and

(B) the lifetime exposure of a person to the highest concentration of the air contaminant from an emission source; and

(3) be set at a level that does not increase the risk of cancer in a person exposed to the air contaminant by greater than one chance in 100,000 or another level set by the commission to protect human health and welfare and the environment when compared

1 to a person not exposed to the contaminant.

2 (b) Not later than January 1, 2010, the commission shall  
3 assemble a panel of independent, nationally recognized experts in  
4 the fields of toxicology, epidemiology, medicine, and public health  
5 to review the commission's effects screening levels and to  
6 recommend standards to the commission that comply with the  
7 requirements of Subsection (a). The panel shall consider the  
8 effects screening levels, methods, and programs of other states as  
9 part of the review. The panel shall provide opportunities for  
10 public comment in conducting the review. The panel shall make  
11 recommendations to the commission regarding the commission's  
12 effects screening levels, methods, and programs not later than July  
13 1, 2011. Not later than October 1, 2011, the commission shall adopt  
14 effects screening levels as required under Subsection (a) that take  
15 into consideration the panel's recommendations. The owner or  
16 operator of an emission source shall comply with the effects  
17 screening levels set by the commission under this section not later  
18 than January 1, 2013. This subsection expires September 1, 2013.

19 (c) Until the commission adopts effects screening levels  
20 that comply with the requirements of Subsection (a), the effects  
21 screening levels adopted by the commission as of September 1, 2009,  
22 are interim standards for purposes of Sections 382.043 and 382.085.  
23 This subsection expires November 1, 2011.

24 Sec. 382.043. SANCTIONS; REPORT. (a) A person may not  
25 cause, suffer, allow, or permit the emission of any air contaminant  
26 or the performance of any activity that causes an effects screening  
27 level set by the commission to be exceeded. The commission by rule

1 shall establish requirements for assessing a penalty or initiating  
2 an action for an injunction against a person who violates this  
3 section.

4 (b) The commission annually shall publish a report that  
5 lists each violation of this section. The report must include any  
6 instance in which the commission suspected a violation but later  
7 determined that the evidence was not sufficient or credible enough  
8 to prove a violation of this section.

9 SECTION 2. Section 382.085, Health and Safety Code, is  
10 amended by amending Subsection (a) and adding Subsections (c), (d),  
11 and (e) to read as follows:

12 (a) A ~~[Except as authorized by a commission rule or order,~~  
13 ~~a]~~ person may not cause, suffer, allow, or permit the emission of  
14 any air contaminant or the performance of any activity that causes  
15 or contributes to, or that will cause or contribute to, either in  
16 isolation or in conjunction with air contaminants from other  
17 sources, a condition of air pollution.

18 (c) For purposes of this section, a condition of air  
19 pollution is considered to exist if sufficient and credible  
20 evidence demonstrates an unacceptable risk of health effects due to  
21 air pollution as determined by:

22 (1) a measured level of an air contaminant in excess of  
23 an effects screening level for the air contaminant for a relevant  
24 period as provided by commission rule;

25 (2) a measured level of multiple air contaminants that  
26 in conjunction with one another increase the risk of cancer in a  
27 person exposed to the air contaminants by greater than one chance in

1 100,000 or another measured level of multiple air contaminants  
2 established by the commission to protect human health and welfare  
3 and the environment;

4 (3) a measured level of multiple air contaminants that  
5 are associated with the same chronic health condition and that in  
6 conjunction with one another are likely to result in a greater risk  
7 to an exposed person's health than would one of the contaminants in  
8 isolation if measured at the relevant effects screening level for  
9 the contaminant; or

10 (4) any other evidence that is of sufficient value and  
11 credibility to demonstrate an adverse effect to human health or  
12 welfare, animal life, vegetation, or property, or an interference  
13 with the normal use and enjoyment of animal life, vegetation, or  
14 property.

15 (d) In addition to any other remedy authorized by law, the  
16 commission by rule shall establish requirements for assessing a  
17 penalty or initiating an action for an injunction against a person  
18 who violates this section.

19 (e) If the commission brings an action for a violation of  
20 this section, the burden is on the owner or operator of the facility  
21 or source, through certification by a responsible official  
22 designated by the owner or operator, to demonstrate to the  
23 commission that:

24 (1) the facility or source is in compliance with all  
25 technological requirements applicable to the facility or source;

26 (2) the facility or source is in compliance with all  
27 monitoring requirements applicable to the facility or source; and

1           (3) the owner or operator is not aware of any evidence  
2 that demonstrates that the facility or source has caused or  
3 contributed to a condition of air pollution in violation of this  
4 section.

5           SECTION 3. (a) Not later than January 1, 2010, the Texas  
6 Commission on Environmental Quality shall adopt requirements for  
7 assessing a penalty or initiating an action for an injunction  
8 against a person who violates:

9           (1) Section 382.043, Health and Safety Code, as added  
10 by this Act; or

11           (2) Section 382.085, Health and Safety Code, as  
12 amended by this Act.

13           (b) Not later than March 1, 2010, the Texas Commission on  
14 Environmental Quality shall publish the first annual report listing  
15 violations of effects screening levels as required by Section  
16 382.043, Health and Safety Code, as added by this Act.

17           (c) Section 382.085, Health and Safety Code, as amended by  
18 this Act, applies only to a violation of Section 382.085, Health and  
19 Safety Code, that occurs on or after the effective date of this Act.  
20 A violation of Section 382.085, Health and Safety Code, that occurs  
21 before the effective date of this Act is governed by the law in  
22 effect when the violation occurred, and the former law is continued  
23 in effect for that purpose.

24           (d) Section 382.043, Health and Safety Code, as added by  
25 this Act, applies to any violation of an effects screening level set  
26 by the commission that occurs on or after the effective date of this  
27 Act. A violation of an effects screening level that occurs before

1 the effective date of this Act is governed by the law in effect when  
2 the violation occurs, and the former law is continued in effect for  
3 that purpose.

4 SECTION 4. This Act takes effect September 1, 2009.