

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 31, 2009

TO: Honorable Byron Cook, Chair, House Committee on Environmental Regulation

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB769 by Hernandez (Relating to standards for measuring the emission of air contaminants under the Texas Clean Air Act; providing a penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB769, As Introduced: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Clean Air Account</i> 151
2010	(\$1,171,602)
2011	(\$582,602)
2012	(\$582,602)
2013	(\$582,602)
2014	(\$582,602)

Fiscal Year	Change in Number of State Employees from FY 2009
2010	8.0
2011	8.0
2012	8.0
2013	8.0
2014	8.0

Fiscal Analysis

The bill would require the Texas Commission on Environmental Quality (TCEQ) to adopt acute and

chronic effects screening levels (ESLs) for air contaminants by rule. The bill specifies the factors that would have to be considered when establishing the ESLs and requires the agency to assemble a panel to review the agency's ESLs and recommend any changes. The agency would be required to publish a report that lists each violation where ESLs were exceeded, or suspected to be exceeded, and establish the requirements for assessing penalties or initiating actions for injunctions against a person that is responsible for allowing air contaminants to exceed established ESLs. The bill also would specify when a condition of air pollution exists, requires consideration of single and cumulative exceedences of ESLs, would require the TCEQ to establish rules to determine penalties, and would place the burden of proof on owners or operators of air emission sources to demonstrate compliance.

Methodology

Passage of the bill is expected to increase TCEQ workload with regards to rule making, permitting, monitoring, determining compliance, establishing ESLs, submitting ESL criteria to a national panel of experts, and publication of violations.

The bill's prohibition against a person causing or contributing to a condition of air pollution in isolation or in conjunction with other sources would result in the need for the development of a methodology and database to assist in determining compliance with this requirement and to issue permits to meet this requirement. The bill's requirement that an annual report of all violations of the new prohibition would require database changes and the creation of new reports. Regarding enforcement, the new statutory prohibition and automatic enforcement for exceeding any ESL set by the agency would result in additional investigations and enforcement cases.

This estimate assumes that the TCEQ would prioritize air contaminants and develop a maximum of sixteen ESLs. This estimate assumes that the TCEQ would not be responsible for conducting additional monitoring activities; facilities themselves would be responsible for reporting their monitoring results to the agency for compliance review. It is estimated that 3.0 FTEs would be needed to develop ESLs, review monitoring data, review panel recommendations, and participate in rule making. An additional 4.0 FTEs would be needed to investigate instances of non compliance. Finally, 1.0 FTE would be needed to handle the expected increase in enforcement cases.

This estimate also assumes the agency would conduct peer review of the ESL process at a cost of \$500,000 in fiscal year 2010. This estimate assumes that all costs associated with the bill would be paid out of the General Revenue-Dedicated Clean Air Account No. 151, as shown in the table above.

Local Government Impact

Local governments owning sources of emissions (utilities, landfills, etc.) could experience cost increases due to increased reporting and compliance requirements. In addition, local governments that have jurisdiction over air pollution may see an increase in demands from citizens in affected neighborhoods which may require them to do more monitoring and enforcement of violations. These costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, WK, ZS, TL