

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 28, 2009

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

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

IN RE: HB4083 by Farrar (Relating to controlling emissions of air contaminants under the Texas Clean Air Act; providing for penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4083, 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	Change in Number of State Employees from FY 2009
2010	(\$261,847)	3.0
2011	(\$214,597)	3.0
2012	(\$214,597)	3.0
2013	(\$214,597)	3.0
2014	(\$214,597)	3.0

Fiscal Analysis

The bill would prohibit air pollution either in isolation or in conjunction with air contaminants from other sources. The bill specifies that a condition of air pollution exists if “sufficient and credible” evidence demonstrates unacceptable health risks as determined by a measured level of a contaminant that exceeds an effects screening level (ESL) for a relevant period; that alone or combined with other contaminants increase a person’s cancer risk by greater than one chance in one hundred thousand, or another level established by the Texas Commission on Environmental Quality (TCEQ); or that combined with other contaminants, associated with the same chronic health condition, are likely to result in greater risk than exposure to the contaminants in isolation.

The bill would define unacceptable health risk to also include any other evidence “of sufficient value” to demonstrate an adverse effect to human health or welfare, animal life, vegetation, or property, or

normal use of animal life, vegetation, or property. The bill also would require that the TCEQ establish by rule requirements for assessing a penalty or initiating an action for an injunction for a person who violates the bill's provisions. If the TCEQ were to bring an action for violation, the burden would be on the owner or operator of a facility or source to demonstrate to the TCEQ that they were in compliance with all technological and monitoring requirements and were not aware of any evidence that they had caused or contributed to a condition of air pollution. The bill also specifies that the TCEQ must adopt requirements for assessing penalties or initiating action for an injunction by January 1, 2010. The bill would only apply to violations that occur on or after September 1, 2009, the effective date of the act.

Methodology

The bill would likely result in an increase in workload to the TCEQ because the bill would require the consideration of emission source and other monitoring data in determining compliance related to ESL exceedances and other conditions of air pollutions. The TCEQ would need to develop a methodology and database to assist in determining compliance with this requirement and to issue permits to meet this requirement. The bill would also affect the process of New Source Review permit issuance.

The TCEQ could also incur costs because of the bills criteria for initiating enforcement action and the assessment of a penalty for violation. Agency investigators would not only be responsible for determining whether a source was in compliance with permitted rates, but also whether emissions at those permitted rates were related to exceeding an ESL or causing a condition of air pollution under the new definition. Increases in investigations would be expected to increase the number of enforcement cases requiring action by the TCEQ. It is estimated that the agency would need a total of 3.0 FTEs and related costs to investigate instances of noncompliance and handle increases in enforcement cases resulting from the bill's passage. This estimate assumes the costs of these additional FTEs, along with related equipment in fiscal year 2010, would be paid out of the General Revenue-Dedicated Clean Air Account No. 151.

This estimate assumes that the TCEQ will not be responsible for conducting monitoring activities. Facilities will be responsible for reporting their monitoring results to the agency for compliance review. For purposes of this fiscal note, it is also assumed that existing ESLs would be used to determine whether a condition of air pollution exists. Many current ESLs are set at a chemical's odor threshold. Currently, the TCEQ incorporates a risk based approach which includes consideration of frequency and duration of exposure when evaluating the effects of authorized emissions. Use of ESLs as defined in the bill could involve the loss of flexibility when considering the toxicity of emissions.

Local Government Impact

Local governments owning sources of emissions (utilities, landfills, etc.) incur cost increases due to the bill's increased reporting and compliance requirements. The cost would depend on the facilities located in an entity's jurisdiction, the types of chemicals present, the air quality of the local area, and whether additional monitoring would have to be conducted to comply with the provisions of the bill. In addition, local governments that have jurisdiction over air pollution may see an increase in demands from citizens in affected neighborhoods, which could also require them to do more monitoring and enforcement of violations.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JOB, SD, ZS, TL