

BILL ANALYSIS

C.S.H.B. 125
By: Legler
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires a rule proposed by the Texas Commission on Environmental Quality (TCEQ) to be a major environmental rule in order for an impact analysis statement to be drafted by the TCEQ describing the anticipated effects of the proposed rule. However, TCEQ does not often adopt major environmental rules under the statutory definition. C.S.H.B. 125 amends the Water Code to require TCEQ to draft an impact analysis describing the anticipated effects of each proposed environmental rule to expand application of the statute and ensure that the requirement is observed.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 125 amends the Water Code to require the Texas Commission on Environmental Quality (TCEQ), before adopting an environmental rule, to conduct a regulatory analysis that weighs the costs and environmental effects expected to result from implementation of and compliance with the rule. The bill requires TCEQ, when giving notice of an environmental rule, to incorporate into the fiscal note a draft impact analysis describing the anticipated effects of the proposed rule. The bill requires the draft impact analysis, at a minimum, to identify the problem the rule is intended to address; identify the environmental effects that the agency expects to result from implementation of and compliance with the rule, including the projected level of reduction of pollutants or contaminants in the air, water, and soil media; identify and describe the costs that the agency expects that state agencies, local governments, the public, and the affected regulated entities, other than small businesses, will incur from implementation of and compliance with the rule; and identify and describe in a separate economic impact analysis the costs that the agency expects that small businesses will incur from implementation of and compliance with the rule. The bill requires TCEQ, in identifying the environmental effects of a rule, to include the modeled improvement for the criteria pollutant design value expected from implementation of the rule, if the rule will be included in the state implementation plan.

C.S.H.B. 125 requires an agency, after considering public comments and determining that a proposed rule should be adopted, to prepare a final regulatory analysis that complies with Government Code provisions relating to the final adoption of a state agency rule. The bill authorizes a person who submitted a comment in accordance with the Administrative Procedure Act to challenge the validity of an environmental rule that is not proposed and adopted in strict compliance with the procedural requirements of the bill's provisions by filing an action for declaratory judgment not later than the 30th day after the effective date of the rule. The bill establishes that an environmental rule is invalid if the court determines that the rule was not proposed and adopted in strict compliance with the procedural requirements of the bill's provisions.

C.S.H.B. 125 makes its provisions applicable only to a rule proposed by TCEQ for which notice is given under the Administrative Procedure Act on or after December 1, 2011.

C.S.H.B. 125 defines "cost," "environmental effect," "environmental rule," and "small business."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 125 contains a provision not included in the original requiring the Texas Commission on Environmental Quality (TCEQ), before adopting an environmental rule, to conduct a regulatory analysis that weighs certain costs and effects. The substitute, in a provision requiring TCEQ to incorporate into the fiscal note a draft impact analysis describing the anticipated effects of a proposed rule, differs from the original by specifying that TCEQ must meet this requirement when giving notice of an environmental rule, whereas the original specifies that the requirement must be met for each proposed rule. The substitute differs from the original by requiring the draft impact analysis, at a minimum, to identify specified information, whereas the original requires the analysis, at a minimum, to meet the requirements of a regulatory analysis of a major environmental rule under the Administrative Procedure Act. The substitute contains a provision not included in the original requiring TCEQ, in identifying the environmental effects of a rule, to include the modeled improvement for the criteria pollutant design value expected from implementation of the rule, if the rule will be included in the state implementation plan.

C.S.H.B. 125 contains a provision not included in the original requiring the agency to prepare a final regulatory analysis that complies with the Administrative Procedure Act after considering public comments and determining that a proposed rule should be adopted. The substitute contains a provision not included in the original authorizing a person who submitted a comment in accordance with the Administrative Procedure Act to challenge the validity of an environmental rule under certain circumstances by filing an action for declaratory judgment within a specified period. The substitute contains a provision not included in the original providing that an environmental rule is invalid if the court determines that an environmental rule was not proposed and adopted in strict compliance with the procedural requirements of the substitute's provisions.

C.S.H.B. 125 contains a provision not included in the original defining "cost," "environmental effect," "environmental rule," and "small business."