

BILL ANALYSIS

C.S.H.B. 788
By: Smith
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The United States Environmental Protection Agency (EPA) is currently the permit authority for greenhouse gas emissions. Interested parties contend that Texas permit applicants are experiencing long delays and that projects with significant economic impact are being stalled due to the bottleneck of greenhouse gas emissions permit applications now pending at the EPA, which is a result, in part, of specific additional federal reviews. C.S.H.B. 788 seeks to put Texas on par with other states that are issuing greenhouse gas emission permits for sources within those states and to counter possible competitive disadvantages Texas businesses are experiencing by directing the Texas Commission on Environmental Quality to adopt a regulatory program that would allow it to become the permit authority for sources of greenhouse gas emissions in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 788 amends the Health and Safety Code to remove the authorization for the Texas Commission on Environmental Quality (TCEQ) by rule to control air contaminants as necessary to protect against adverse effects related to climatic changes, including global warming.

C.S.H.B. 788 authorizes TCEQ, to the extent that greenhouse gas emissions require authorization under federal law, to issue a permit authorizing greenhouse gas emissions. The bill requires TCEQ to adopt rules to implement the permitting process, including rules specifying the procedures to transition to review by TCEQ any applications pending with the United States Environmental Protection Agency (EPA) for approval under federal law, and to prepare and submit appropriate federal program revisions to the EPA for approval. The bill specifies that the permit processes under these provisions are not subject to the requirements relating to a contested case hearing under the Texas Clean Air Act, statutory provisions governing TCEQ, or certain provisions of the Administrative Procedure Act. The bill requires TCEQ, if authorization to emit greenhouse gas emissions is no longer required under federal law, to repeal the rules adopted under these provisions and to prepare and submit appropriate federal program revisions to the EPA for approval.

C.S.H.B. 788 limits TCEQ's authority to impose fees for emissions of greenhouse gas to the extent the fees are necessary to cover TCEQ's additional reasonably necessary direct costs of implementing the permitting process for greenhouse gas emissions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 788 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.069 to read as follows:

Sec. 382.069. GREENHOUSE GAS EMISSIONS PERMITTING. (a) In this section, "greenhouse gas" means:

- (1) carbon dioxide;
- (2) methane;
- (3) nitrous oxide; and
- (4) hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(b) The commission by rule shall adopt a program to allow the commission to assume authority for issuing permits, including preconstruction and federal operating permits, that include the regulation of greenhouse gas emissions in accordance with federal law.

(c) As part of the program under Subsection (b), the commission shall develop measures to streamline the authorization process for permits, such as the use of general permits, standard permits, and presumptive best available control technology, that the commission determines are warranted for certain greenhouse gas emissions source categories.

(d) If it is determined that greenhouse gas emissions are no longer required to be regulated under federal law, on the effective date of the determination:

(1) the commission shall immediately cease:

(A) issuing and requiring permits that include regulation of greenhouse gas emissions; and

(B) enforcing permit provisions regulating greenhouse gas emissions;

(2) a person subject to permit provisions regulating greenhouse gas emissions is no longer required to comply with those provisions; and

(3) rules adopted by the commission to regulate greenhouse gas emissions are invalid.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 2. (a) The Texas Commission on Environmental Quality shall adopt the program required by Section 382.069, Health and Safety Code, as added by this Act, as soon as possible after the effective date of this Act.

(b) The adoption of a program under Section 382.069, Health and Safety Code, as added by this Act, does not affect the validity of a permit regulating greenhouse gas emissions issued by the United States Environmental Protection Agency:

(1) before the effective date of the program; or

(2) on or after the effective date of the program if the application for the permit was filed with that agency before the effective date of the program.

No equivalent provision.

No equivalent provision.

SECTION 1. The legislature finds that in the interest of the continued vitality and economic prosperity of this state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred permitting authority for emissions of greenhouse gases.

No equivalent provision.

SECTION 2. Section 382.0205, Health and Safety Code, is amended to read as follows:
Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition; and

(2) stratospheric changes, including depletion of ozone; ~~and~~

~~[(3) climatic changes, including global warming].~~

No equivalent provision.

SECTION 3. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.05102 to read as follows:

Sec. 382.05102. PERMITTING AUTHORITY OF COMMISSION; GREENHOUSE GAS EMISSIONS. (a) In this section, "greenhouse gas emissions" means emissions of:

(1) carbon dioxide;

- (2) methane;
- (3) nitrous oxide;
- (4) hydrofluorocarbons;
- (5) perfluorocarbons; and
- (6) sulfur hexafluoride.
- (b) To the extent that greenhouse gas emissions require authorization under federal law, the commission may authorize greenhouse gas emissions in a manner consistent with Section 382.051.
- (c) The commission shall:
 - (1) adopt rules to implement this section, including rules specifying the procedures to transition to review by the commission any applications pending with the United States Environmental Protection Agency for approval under 40 C.F.R. Section 52.2305; and
 - (2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.
- (d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.
- (e) If authorization to emit greenhouse gas emissions is no longer required under federal law, the commission shall:
 - (1) repeal the rules adopted under Subsection (c); and
 - (2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

No equivalent provision.

SECTION 4. Section 382.0621, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

- (f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not

SECTION 5. Same as introduced version.

receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.