

By: White

H.B. No. 2354

A BILL TO BE ENTITLED

AN ACT

relating to the stringency of environmental regulations adopted by state agencies.

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

SECTION 1. The heading to Section 2001.0225, Government Code, is amended to read as follows:

Sec. 2001.0225. ADOPTION [~~REGULATORY ANALYSIS~~] OF CERTAIN [~~MAJOR~~] ENVIRONMENTAL RULES PROHIBITED.

SECTION 2. Section 2001.0225(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other law, [This section applies only to a major environmental rule adopted by] a state agency may not by rule adopt an environmental standard or requirement [7] the result of which is to:

(1) exceed a standard set by federal law, unless the rule is specifically required by state law;

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

(3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

SECTION 3. Sections 2001.035(a) and (b), Government Code,

1 are amended to read as follows:

2 (a) A rule is voidable unless a state agency adopts it in
3 substantial compliance with Section 2001.0225 and the procedural
4 requirements of Sections 2001.023 [~~2001.0225~~] through 2001.034.

5 (b) A person must initiate a proceeding to contest a rule on
6 the ground of noncompliance with Section 2001.0225 or the
7 procedural requirements of Sections 2001.023 [~~2001.0225~~] through
8 2001.034 not later than the second anniversary of the effective
9 date of the rule.

10 SECTION 4. Section 2001.040, Government Code, is amended to
11 read as follows:

12 Sec. 2001.040. SCOPE AND EFFECT OF ORDER INVALIDATING
13 AGENCY RULE. If a court finds that an agency has not substantially
14 complied with Section 2001.0225 or one or more procedural
15 requirements of Sections 2001.023 [~~2001.0225~~] through 2001.034,
16 the court may remand the rule, or a portion of the rule, to the
17 agency and, if it does so remand, shall provide a reasonable time
18 for the agency to either revise or readopt the rule through
19 established procedure. During the remand period, the rule shall
20 remain effective unless the court finds good cause to invalidate
21 the rule or a portion of the rule, effective as of the date of the
22 court's order.

23 SECTION 5. Section 382.0173(d), Health and Safety Code, is
24 amended to read as follows:

25 (d) This section applies only while the federal rules cited
26 in this section are enforceable. The [~~and does not limit the~~
27 ~~authority of the~~] commission may not [~~to~~] implement more stringent

emissions control requirements than are required by federal law.

SECTION 6. Section 382.051961(b), Health and Safety Code, is amended to read as follows:

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) ~~[conducts a regulatory analysis as provided by Section 2001.0225, Government Code,~~

~~(2)]~~ determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(2) ~~(3)~~ establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(3) ~~(4)~~ considers whether the requirements of the

1 permit should be imposed only on facilities that are located in a
2 particular geographic region of the state.

3 SECTION 7. Section 91.602(b), Natural Resources Code, is
4 amended to read as follows:

5 (b) The rules adopted by the commission under this section
6 must be consistent with the hazardous waste regulations adopted by
7 the administrator of the United States Environmental Protection
8 Agency under the federal Solid Waste Disposal Act, as amended by the
9 Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section
10 6901 et seq.). ~~[The commission may adopt and enforce rules that are
11 more stringent than the federal hazardous waste regulations if
12 necessary to protect human health.]~~

13 SECTION 8. Section 26.357(b), Water Code, is amended to
14 read as follows:

15 (b) The commission may not impose standards or rules more
16 stringent than the federal requirements ~~[unless the commission
17 determines that more stringent standards or rules are necessary to
18 protect human health or the environment].~~

19 SECTION 9. Section 27.020, Water Code, is amended to read as
20 follows:

21 Sec. 27.020. MINING OF SULFUR. The commission is
22 authorized to develop a regulatory program with respect to the
23 injection of fluid associated with the mining of sulfur by the
24 Frasch process in accordance with the provisions of this chapter.
25 The commission may not impose any requirements more stringent than
26 those promulgated by the administrator of the United States
27 Environmental Protection Agency pursuant to the federal Safe

1 Drinking Water Act, 42 U.S.C. 300h et seq., as amended[, ~~unless the~~
2 ~~commission determines that more stringent regulations are~~
3 ~~necessary to protect human health or the environment~~].

4 SECTION 10. Sections 2001.0225(b), (c), (d), (e), (f), and
5 (g), Government Code, are repealed.

6 SECTION 11. (a) Not later than September 1, 2014, a state
7 agency shall adopt rules to comply with Section 2001.0225,
8 Government Code, as amended by this Act.

9 (b) A rule or policy of a state agency that does not meet the
10 requirements of Section 2001.0225, Government Code, as amended by
11 this Act, remains in effect only until the earlier of:

12 (1) the date the rule or policy is revised by the
13 agency under Subsection (a) of this section; or

14 (2) September 1, 2014.

15 SECTION 12. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2013.