

SENATE AMENDMENTS

2nd Printing

By: Smith, Reynolds

H.B. No. 788

A BILL TO BE ENTITLED

AN ACT

relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.

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

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.

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]~~.

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

1 emissions" means emissions of:

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

8 (b) To the extent that greenhouse gas emissions require
9 authorization under federal law, the commission may authorize
10 greenhouse gas emissions in a manner consistent with Section
11 382.051.

12 (c) The commission shall:

13 (1) adopt rules to implement this section, including
14 rules specifying the procedures to transition to review by the
15 commission any applications pending with the United States
16 Environmental Protection Agency for approval under 40 C.F.R.
17 Section 52.2305; and

18 (2) prepare and submit appropriate federal program
19 revisions to the United States Environmental Protection Agency for
20 approval.

21 (d) The permit processes authorized by this section are not
22 subject to the requirements relating to a contested case hearing
23 under this chapter, Chapter 5, Water Code, or Subchapters C-G,
24 Chapter 2001, Government Code.

25 (e) If authorization to emit greenhouse gas emissions is no
26 longer required under federal law, the commission shall:

27 (1) repeal the rules adopted under Subsection (c); and

1 (2) prepare and submit appropriate federal program
2 revisions to the United States Environmental Protection Agency for
3 approval.

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

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

10 SECTION 5. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2013.

ADOPTED

MAY 17 2013

Atty. Gen.
Secretary of the Senate

By: *J. J. Aguilar*

H.B. No. 788

Substitute the following for .B. No. :

By: *Ken Hegar*

C.S. H.B. No. 788

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SECTION 2. 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

1 382.051.

2 (c) The commission shall:

3 (1) adopt rules to implement this section, including
4 rules specifying the procedures to transition to review by the
5 commission any applications pending with the United States
6 Environmental Protection Agency for approval under 40 C.F.R.
7 Section 52.2305; and

8 (2) prepare and submit appropriate federal program
9 revisions to the United States Environmental Protection Agency for
10 approval.

11 (d) The permit processes authorized by this section are not
12 subject to the requirements relating to a contested case hearing
13 under this chapter, Chapter 5, Water Code, or Subchapters C-G,
14 Chapter 2001, Government Code.

15 (e) If authorization to emit greenhouse gas emissions is no
16 longer required under federal law, the commission shall:

17 (1) repeal the rules adopted under Subsection (c); and

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19 revisions to the United States Environmental Protection Agency for
20 approval.

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22 amended by adding Subsection (f) to read as follows:

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

27 SECTION 4. This Act takes effect immediately if it receives

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2013.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 17, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB788** by Smith (Relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB788, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2015.

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
2014	\$0
2015	\$0
2016	\$0
2017	\$0
2018	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Operating Permit Fees Account</i> 5094	Probable Revenue Gain/(Loss) from <i>Operating Permit Fees Account</i> 5094
2014	(\$76,460)	\$76,460
2015	(\$886,772)	\$886,772
2016	(\$1,558,008)	\$1,558,008
2017	(\$2,313,661)	\$2,313,661
2018	(\$3,049,989)	\$3,049,989

Fiscal Year	Change in Number of State Employees from FY 2013
2014	1.0
2015	10.0
2016	19.0
2017	29.0
2018	39.0

Fiscal Analysis

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program by adopting rules and issuing permits to regulate greenhouse gas (GHG) emissions to the extent that greenhouse gas emissions require authorization under federal law. The bill would require the agency to adopt rules specifying the procedures for the transition to review certain pending applications with the U.S. Environmental Protection Agency (EPA), and the bill would require the agency to prepare and submit appropriate federal program revisions to the U.S. EPA. The bill would provide that if it was determined those GHGs were no longer required to be regulated under federal law; the TCEQ would be required to repeal rules relating to the regulation of GHG emissions.

The bill would authorize the TCEQ to impose fees for greenhouse gas emissions to the extent the fees are necessary to cover the agency's costs in implementing a greenhouse gas regulation program as required by the bill.

The bill would take effect immediately if it received a two-thirds vote in both houses. Otherwise, it would take effect on September 1, 2013.

Methodology

The TCEQ reports that Texas does not currently have the authority to regulate GHG emissions for pre-construction or Title V activities. Instead, EPA is directly responsible for pre-construction, or New Source Review (NSR), permitting for major sources of GHG emissions in Texas. The TCEQ reports that implementing the bill would affect the agency's NSR and Title V permitting programs and affect Statewide Implementation Plan (SIP) development. The agency also reports that it would be required to seek permitting authority from the U.S. Environmental Protection Agency (EPA). The agency estimates that the process of rule-making, SIP revision, SIP approval by EPA, removal of the current federal implementation plan for GHG emissions, and implementing any requirements for Title V permits could take up to three years to complete. However, the TCEQ reports that once the agency would establish the permitting program for GHGs, regulated entities would be subject to a more streamlined process than the existing federal permitting process.

The agency estimates that there could be as many as 1,800 existing sites throughout the state with GHG emissions that could trigger the Title V GHG emissions threshold. The agency reports that this would result in the need for additional resources to establish a permitting program and perform associated monitoring, compliance, and enforcement duties for these additional Title V sites. This estimate assumes that the GHG emissions permitting requirements would only apply to major emissions sources and not minor sources.

The TCEQ reports that it would need to add a significant number of FTEs to implement the GHG permitting program, starting with 1.0 additional FTE in 2014 and increasing to 39.0 FTEs by fiscal year 2018. In the first year of implementation (fiscal year 2014), the agency would add 1.0 Environmental Permit Specialist to establish and begin issuing GHG Title V permits and handle other critical support tasks such as rulemaking for NSR and Title V purposes. Starting in fiscal year 2015, the TCEQ would need an additional 9.0 FTEs, including 7.0 Regional Investigators, 1.0 Environmental Specialist, and 1.0 Attorney to perform compliance investigations for GHG Title V permits, process and issue an estimated 360 GHG Title V permit applications per year and provide legal support for the GHG permitting program. An additional 9.0 FTEs would be added in fiscal year 2016, followed by an additional 10.0 FTEs in fiscal year 2017, and another 10.0 FTEs in fiscal year 2018 for compliance investigations, enforcement cases, and other activities associated with the growing number of GHG permittees within the TCEQ's regulatory purview. Costs associated with the additional staff are shown in the table above.

Because the bill authorizes fees to be collected to cover TCEQ costs in resulting GHG emissions, this analysis assumes that the TCEQ would assess fees similar to existing Title V fees, and that those fees would be deposited to the General Revenue-Dedicated Operating Permit Fees Account No. 5094 in an amount sufficient to cover the estimated costs of implementing the bill's provisions.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: UP, SD, SZ, ZS, TL

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 7, 2013

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB788 by Smith (Relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB788, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2015.

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
2014	\$0
2015	\$0
2016	\$0
2017	\$0
2018	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Operating Permit Fees Account</i> 5094	Probable Revenue Gain/(Loss) from <i>Operating Permit Fees Account</i> 5094
2014	(\$76,460)	\$76,460
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Fiscal Year	Change in Number of State Employees from FY 2013
2014	1.0
2015	10.0
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Fiscal Analysis

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program by adopting rules and issuing permits to regulate greenhouse gas (GHG) emissions to the extent that greenhouse gas emissions require authorization under federal law. The bill would require the agency to adopt rules specifying the procedures for the transition to review certain pending applications with the U.S. Environmental Protection Agency (EPA), and the bill would require the agency to prepare and submit appropriate federal program revisions to the U.S. EPA. The bill would provide that if it was determined those GHGs were no longer required to be regulated under federal law; the TCEQ would be required to repeal rules relating to the regulation of GHG emissions.

The bill would authorize the TCEQ to impose fees for greenhouse gas emissions to the extent the fees are necessary to cover the agency's costs in implementing a greenhouse gas regulation program as required by the bill.

The bill would take effect immediately if it received a two-thirds vote in both houses. Otherwise, it would take effect on September 1, 2013.

Methodology

The TCEQ reports that Texas does not currently have the authority to regulate GHG emissions for pre-construction or Title V activities. Instead, EPA is directly responsible for pre-construction, or New Source Review (NSR), permitting for major sources of GHG emissions in Texas. The TCEQ reports that implementing the bill would affect the agency's NSR and Title V permitting programs and affect Statewide Implementation Plan (SIP) development. The agency also reports that it would be required to seek permitting authority from the U.S. Environmental Protection Agency (EPA). The agency estimates that the process of rule-making, SIP revision, SIP approval by EPA, removal of the current federal implementation plan for GHG emissions, and implementing any requirements for Title V permits could take up to three years to complete. However, the TCEQ reports that once the agency would establish the permitting program for GHGs, regulated entities would be subject to a more streamlined process than the existing federal permitting process.

The agency estimates that there could be as many as 1,800 existing sites throughout the state with GHG emissions that could trigger the Title V GHG emissions threshold. The agency reports that this would result in the need for additional resources to establish a permitting program and perform associated monitoring, compliance, and enforcement duties for these additional Title V sites. This estimate assumes that the GHG emissions permitting requirements would only apply to major emissions sources and not minor sources.

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Because the bill authorizes fees to be collected to cover TCEQ costs in resulting GHG emissions, this analysis assumes that the TCEQ would assess fees similar to existing Title V fees, and that those fees would be deposited to the General Revenue-Dedicated Operating Permit Fees Account No. 5094 in an amount sufficient to cover the estimated costs of implementing the bill's provisions.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality, 304 Comptroller of Public Accounts

LBB Staff: UP, SZ, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB788 by Smith (Relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB788, As Engrossed: an impact of \$0 through the biennium ending August 31, 2015.

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The bill would take effect immediately if it received a two-thirds vote in both houses. Otherwise, it would take effect on September 1, 2013.

Methodology

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: UP, SZ, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 1, 2013

TO: Honorable Patricia Harless, Chair, House Committee on Environmental Regulation

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB788 by Smith (Relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB788, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2015.

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
2014	\$0
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Fiscal Year	Change in Number of State Employees from FY 2013
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Fiscal Analysis

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The bill would authorize the TCEQ to impose fees for greenhouse gas emissions to the extent the fees are necessary to cover the agency's costs in implementing a greenhouse gas regulation program as required by the bill.

The bill would take effect immediately if it received a two-thirds vote in both houses. Otherwise, it would take effect on September 1, 2013.

Methodology

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The agency estimates that there could be as many as 1,800 existing sites throughout the state with GHG emissions that could trigger the Title V GHG emissions threshold. The agency reports that this would result in the need for additional resources to establish a permitting program and perform associated monitoring, compliance, and enforcement duties for these additional Title V sites. This estimate assumes that the GHG emissions permitting requirements would only apply to major emissions sources and not minor sources.

The TCEQ reports that it would need to add a significant number of FTEs to implement the GHG permitting program, starting with 1.0 additional FTE in 2014 and increasing to 39.0 FTEs by fiscal year 2018. In the first year of implementation (fiscal year 2014), the agency would add 1.0 Environmental Permit Specialist to establish and begin issuing GHG Title V permits and handle other critical support tasks such as rulemaking for NSR and Title V purposes. Starting in fiscal year 2015, the TCEQ would need an additional 9.0 FTEs, including 7.0 Regional Investigators, 1.0 Environmental Specialist, and 1.0 Attorney to perform compliance investigations for GHG Title V permits, process and issue an estimated 360 GHG Title V permit applications per year and provide legal support for the GHG permitting program. An additional 9.0 FTEs would be added in fiscal year 2016, followed by an additional 10.0 FTEs in fiscal year 2017, and another 10.0 FTEs in fiscal year 2018 for compliance investigations, enforcement cases, and other activities associated with the growing number of GHG permittees within the TCEQ's regulatory purview. Costs associated with the additional staff are shown in the table above.

Because the bill authorizes fees to be collected to cover TCEQ costs in resulting GHG emissions, this analysis assumes that the TCEQ would assess fees similar to existing Title V fees, and that those fees would be deposited to the General Revenue-Dedicated Operating Permit Fees Account No. 5094 in an amount sufficient to cover the estimated costs of implementing the bill's provisions.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: UP, SZ, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 18, 2013

TO: Honorable Patricia Harless, Chair, House Committee On Environmental Regulation

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB788 by Smith (Relating to regulation of greenhouse gas emissions by the Texas Commission on Environmental Quality.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB788, As Introduced: an impact of \$0 through the biennium ending August 31, 2015.

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
2014	\$0
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All Funds, Five-Year Impact:

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Fiscal Year	Change in Number of State Employees from FY 2013
2014	1.0
2015	10.0
2016	19.0
2017	29.0
2018	39.0

Fiscal Analysis

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program by adopting rules and issuing permits to regulate greenhouse gas (GHG) emissions in accordance with federal law. Permits regulating GHG emissions would include preconstruction and federal operating permits. The bill would require the TCEQ to develop a streamlined permitting program using general and standard permits; requiring use of best available control technology; and other measures that the agency would determine are necessary for each GHG emission source category. The bill would provide that if it was determined those GHGs were no longer required to be regulated under federal law, the TCEQ would be required to immediately cease issuing and requiring permits that regulate GHG emissions.

The bill would require the TCEQ to adopt the permitting program for GHG emissions as soon as possible after the effective date of the act (immediately upon receiving two-thirds vote of both houses or September 1, 2013 if the votes are not received). The adoption of a GHG emissions program would not affect the validity of a GHG emissions permit issued by EPA.

Methodology

The TCEQ reports that Texas does not currently have the authority to regulate GHG emissions for preconstruction or Title V activities. Instead, EPA is directly responsible for pre-construction, or New Source Review (NSR), permitting for major sources of GHG emissions in Texas. The TCEQ reports that implementing the bill would affect the agency's NSR and Title V permitting programs and affect Statewide Implementation Plan (SIP) development. The agency also reports that it would be required to seek permitting authority from the U.S. Environmental Protection Agency (EPA). The agency estimates that the process of rulemaking, SIP revision, SIP approval by EPA, removal of the current federal implementation plan for GHG emissions, and implementing any requirements for Title V permits could take up to three years to complete. However, the TCEQ reports that once the agency would establish the permitting program for GHGs, regulated entities would be subject to a more streamlined process than the existing federal permitting process.

The agency estimates that there could be as many as 1,800 existing sites throughout the state with GHG emissions that could trigger the Title V GHG emissions threshold. The agency reports that this would result in the need for additional resources to establish a permitting program and perform associated monitoring, compliance, and enforcement duties for these additional Title V sites. This estimate assumes that the GHG emissions permitting requirements would only apply to major emissions sources and not minor sources.

The TCEQ reports that it would need to add a significant number of FTEs to implement the GHG permitting program, starting with 1.0 additional FTE in 2014 and increasing to 39.0 FTEs by fiscal

year 2018. In the first year of implementation (fiscal year 2014), the agency would 1.0 Environmental Permit Specialist to establish and begin issuing GHG Title V permits and handle other critical support tasks such as rulemaking for NSR and Title V purposes. Starting in fiscal year 2015, the TCEQ would need an additional 9.0 FTEs, including 7.0 Regional Investigators, 1.0 Environmental Specialist, and 1.0 Attorney, to perform compliance investigations for GHG Title V permits, process and issue an estimated 360 GHG Title V permit applications per year and provide legal support for the GHG permitting program. An additional 9.0 FTEs would be added in fiscal year 2016, followed by an additional 10.0 FTEs in fiscal year 2017, and another 10.0 FTEs in fiscal year 2018 for compliance investigations, enforcement cases, and other activities associated with the growing number of GHG permittees within the TCEQ's regulatory purview. Costs associated with the additional staff are shown in the table above.

Because the TCEQ is required by federal law to assess and collect fees sufficient to support a permitting program that meets federal requirements, this estimate assumes that the TCEQ would assess fees similar to existing Title V fees, and that those fees would be deposited to the General Revenue-Dedicated Operating Permit Fees Account No. 5094 in an amount sufficient to cover the estimated costs of implementing the bill's provisions.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: UP, SZ, ZS, TL